SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 5

RAPHAEL KONIGSBERG, PETITIONER,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of California	A	1
Petition to review denial of application for admission to the State Bar of California	A	1
Exhibit "A"—Hearing of September 25, 1953, before the Committee of Bar Examiners, Southern Subcommittee, Los Angeles	1	4
Appearances	1	4
Testimony of Raphael Konigsberg	1	4
Alice King Bennett, direct	62	42
Exhibit "A"—Hearing of December 9, 1953 before the Committee of Bar Examiners, Southern Subcommittee, Los Angeles	71	46
Appearances	71	46
Testimony of Alice K. Bennett, cross	73	48
Raphael Konigsberg	89	57
Exhibit "A"—Hearing of January 27, 1954 before the Committee of Bar Examiners, Southern Subcommittee, Los Angeles	138	86
Appearances	138	86
Colloquy between Members and counsel	138	86

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—987-8

	Original	Print
Proceedings in the Supreme Court of the State of California—Continued		
Petition to review denial of application for admission to the State Bar of California—Continued		
Exhibits—Continued		
Exhibit "B"—Hearing of March 13, 1954 before the Committee of Bar Examiners, Los Angeles on appeal from the determination of the Southern Subcommittee	156	96
Appearances	156	96
Colloquy between Members, counsel and applicant	156	96
Statement of Mr. Konigsberg	159	98
Colloquy between Members, counsel and applicant	172	107
Exhibit "C"—Letter dated February 8, 1954 from Committee of Bar Examiners of the State Bar of California to Raphael Konigsberg	214	131
Order denying petition for writ of review	217	~~132~~ 132
Clerk's certificate (omitted in printing)	218	~~133~~ 132
Order allowing certiorari	219	~~135~~ 132
Exhibits:		
Committee's Exhibit No. 1—Various articles written by Raphael Konigsberg during 1950-1951 and published in the California Eagle	218	133
Committee's Exhibit No. 2—Testimony of Raphael Konigsberg of September 7, 1948 before the Senate Fact-Finding Committee of Un-American Activities of the State of California	285	247
Committee's Exhibit No. 3—Written statement submitted by Raphael Konigsberg to said Committee	296	256
Committee's Exhibit No. 4—Registration as a law student by Raphael Konigsberg	301	260
Committee's Exhibit No. 5—Application for admission to practice law submitted by Raphael Konigsberg	307	266
Applicant's Exhibit "A"—War Department Technical Manual (PM 28-210)	313	272
Applicant's Exhibit "B"—War Department Mobilization Regulation ("Morale")	319	280
Applicant's Exhibit "C"—Army Orientation Fact Sheet	321	282
Applicant's Exhibit "D"—Article by Raphael Konigsberg published in the National Jewish Monthly in 1944, entitled "Why I am in This Fight"	325	286f
Applicant's Exhibit "E"—File of letters attesting to applicant's good moral character	326	287

[fol. A] **IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

RAPHAEL KONIGSBERG, Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA, Respondents,

PETITION TO REVIEW DENIAL OF APPLICATION OF RAPHAEL KONIGSBERG FOR ADMISSION TO THE STATE BAR OF CALIFORNIA UNDER RULE 59(b) OF THE RULES OF APPEAL

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the State of California:

Petitioner, Raphael Konigsberg, by this, a verified petition respectfully applies for an Order to Review the Denial of the Application of the Petitioner for certification to this honorable Court for admission to practise law in the State of California. The petitioner sets forth the following facts as the basis for his petition for review:

[fol. B] 1. That on or about the 4th day of December, 1950, your petitioner filed with the respondent his application to register as a student of law. Said application was filed on the form prescribed by the Committee of Bar Examiners, a duly constituted committee established by the Board of Bar Governors under, and by virtue of, the State Bar Act (Stat. 1939, Chapter 34, page 347, as amended; Chapter 4, comprising Section 6064, inclusive, of the Business and Professions Code of the State of California).

2. That your applicant, fully, truthfully, and accurately fulfilled all of the conditions and requirements established for permission to take said bar examination in October of 1953.

3. That your petitioner was examined by the committee of Bar Examiners in October, 1953, and passed the said written examination, and thereby fulfilled the requirement of the Bar Examiners in this particular.

4. That on or about the 18th day of September 1953, just

sixteen days prior to the conducting of the said bar examination, your petitioner was advised by the Southern Subcommittee of the Committee of Bar Examiners that he was personally to appear before the Committee. That your petitioner appeared at the said hearing on the 25th day of [fol. C] September, 1953, and was interrogated by the committee, under oath, at this time; that thereafter your petitioner appeared at further hearings with counsel before the Southern Subcommittee of the Committee of Bar Examiners on the 9th day of December, 1953, and the 27th day of January, 1954.

A full, true and correct copy of the respondent's official reporter transcript of each of these appearances is attached hereto and marked as Exhibit "A" and by reference made a part hereof.

That thereafter, on the 8th day of February, 1954, your petitioner was informed by the Southern Subcommittee of the Committee of Bar Examiners, that his application for certification for admission to the Bar in the State of California had been denied. A true and correct copy of this letter of denial is attached hereto as Exhibit C.

That thereafter your petitioner informed the Committee of Bar Examiners that he desired to appeal to the full Committee of the Committee of Bar Examiners and requested a review of the proceedings.

5. That, thereafter, on the 13th day of March, 1954, a further hearing was held before the full committee of Bar Examiners in the City of Los Angeles, and proceedings, both oral and documentary, were taken at this time. A full, [fol. D] true and correct copy of the respondent's official reporter transcript at said hearing is also attached hereto as Exhibit B, and made a part hereof by this reference.

6. Thereafter your applicant was informed on the 17th day of May, 1954, that the full Committee of Bar Examiners had denied his application. A copy of this letter is attached hereto as Exhibit D.

7. This petition to the Supreme Court is for review of the decision of the Committee of Bar Examiners of which the applicant was informed on the 17th day of May, 1954.

8. Your petitioner requests review of the decision of the

Committee of Bar Examiners upon the following specified bases:

1. That the petitioner sustained his burden of proof of establishing his good moral character and all other requirements established by law in the State of California for applicants for admission to the bar.

2. That the committee erred in asserting that the petitioner had failed to meet his burden of proof of establishing his good moral character.

3. That no lawful evidence was received or exists supporting the denial of the application of the peti- [fol. E] tioner.

4. That the committee erred in requiring the petitioner to assume the burden of proof relating to Section 6064.1 of the Business and Professions Code.

5. That the committee erred in asserting that the petitioner had failed to meet his burden of proof relating to Section 6064.1 of the Business and Professions Code.

6. That the Committee of Bar Examiners failed to inform your petitioner of the information which the committee had received "adversely bearing on the moral character of the petitioner."

7. That your petitioner was not given a reasonable opportunity to rebut or explain the adverse information received by the committee.

8. That the failure of the committee to grant to the petitioner the rights listed in (6) and (7) above was a violation of the rules of the committee regulating the admission to practice law in California and, specifically, Rule X, Section 101.

9. That the denial of the application of the petitioner violates the rights of the petitioner under the First Amendment to the Constitution of the United States. [fol. F] 10. That the denial of the application violates the Fifth Amendment to the Constitution of the United States in that it deprives petitioner of liberty or property without due process of law.

11. That said denial violates the 14th Amendment to the Constitution of the United States in that it is an attempt by the State of California to deprive peti-

tioner of liberty or property without due process of law and denies petitioner the equal protection of the laws.

12. That said denial violates the Constitution of the State of California, Article 1, Sections 3, 9 and 13.

Wherefore, petitioner prays that an order be made herein for review of said denial and that upon said review it be adjudged that petitioner should be admitted to practice law in the State of California upon the taking of the proper oath and upon the payment of the necessary fees, and for such other relief as may be proper.

Respectfully submitted, Raphael Konigsberg, Petitioner, Edward Mosk, Attorney for Petitioner.

Duly sworn to by Raphael Konigsberg, juriat omitted in printing.

[fol. 1] EXHIBIT "A" TO PETITION

THE COMMITTEE OF BAR EXAMINERS

SOUTHERN SUBCOMMITTEE

LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG, Application for Permission to Take Bar Examination

HEARING OF SEPTEMBER 25, 1953

APPEARANCES:

Graham L. Sterling, Jr., Esq., Chairman.
Harold A. Black, Esq., Member of Committee.
Arthur E. Preston, Esq., Member of Committee.
Leroy A. Wright, II, Esq., Member of Committee.
Ralphael Konigsberg, Applicant.
Alma Stayton, Assistant Secretary.
Marion Farrell, Reporter.

Raphael Konigsberg, called as a witness, being first duly sworn, was examined and testified as follows:

Mr. Graham L. Sterling: Would you be seated, please, Mr. Konigsberg. Mr. Preston across the table from you

is a member of the Committee and has studied your file and reviewed it briefly with us. Mr. Wright is on my right, Mr. Black is on my left, and I am Mr. Sterling. Mr. Preston wants to ask you some questions.

[fol. 2] Examination.

By Mr. Preston:

Q. Mr. Konigsberg, in looking over your file it appears you came to Los Angeles in 1936, and at that time you had your A.B. degree and your M.A. degree; that you had attended Ohio Wesleyan——

A. By the Witness: Ohio State.

Q. Did you attend Ohio Wesleyan?

A. No, never.

Q. Did you receive both degrees from Ohio State?

A. Yes, I received my Bachelor's degree in 1931 and my Master of Arts in Social Administration in 1935.

Q. And that since you have come to this area you have been gainfully employed as a teacher.

A. No, not here; not in Los Angeles I have never been a teacher. I was a teacher in Cleveland, Ohio.

Q. Well since graduating from Ohio State and receiving your Master's degree I take it that you have taught school, been a public relations investigator——

A. No, I was a teacher after my Bachelor's degree.

Q. When did you receive your Master's?

A. In '35. You see I got my Bachelor's in '31 and taught in Cleveland right after that. That was in the midst of the depression. They were not hiring teachers so many went into relief work. I became interested in social work. I [fol. 3] decided to go back to school and get work in social work. I was offered a scholarship to graduate school. I accepted it and took a year's training.

Q. Since coming to California what positions have you held?

A. Well the first job I had was offered to me by Miss Mary Stanton who was then the Executive Director of the Council for Social Agencies. That was almost a department of the Community Chest in 1936. It is now known as the Welfare Federation of Metropolitan Los Angeles. The

job she offered me was Assistant Director of the Research Department of the Council of Social Agencies.

Q. What other positions?

A. Well while I was working with the Council I was offered a job as Director of Community Service with the Federation of Jewish Welfare organizations, that was '37, by Mr. Charles Schottland, who is now Director of Public Welfare of the State of California. You want all the jobs in order?

Q. Yes.

A. Let's see. After that job the next one was with the State Relief Administration as Supervisor of one of the districts. As you may recall every county was divided into various districts, and I was Supervisor of the Adams District here in the City of Los Angeles, and after being fired from that job for the reasons indicated there, then I went [fol. 4] to work for what is now known as the City of Hope, and was at the Sanatorium in Duarte, California. It is just about thirty miles out from here. And well then I enlisted in the Army. Let's see, that job began in, I think it was January, 1940, as I recall, and in '42, I think '41, I ended that job. I was only working about a year when I was called into the Army, I enlisted in the Army, and received a direct commission in August of '42 as a Lieutenant of the U. S. Army. Well then I was discharged from the Army in April, I think it was, of '46 and went back to my job back at the Sanatorium out at Duarte again, and the job there before I went in the Army I was the Assistant Executive Director. When I came back from the Army I was Director of Social Service at the Sanatorium. As you may know, gentlemen, the city office here is just the administrative office. All the operations are out at Duarte. So I was working out at Duarte and not in the city, and I worked there from the time of my return from the Army in April of '46 to December of 1949 or the first of January I think my termination date was of 1950, and I was dismissed there for the reasons I have given, over a professional issue. May I take just a half moment to explain this?

Mr. Sterling: Yes.

A. I think if you are familiar with the social work profession there are various standards just like every other [fol. 5] profession has, and this institution which was dependent upon contributions to give free service was in financial straits and thought that one way of raising money would be to charge for admissions, which they hadn't done before, but they wouldn't do this or couldn't do this public relations-wise as it would hurt contributions, so they wanted me as Director of Social Service to state that all these applications had been passed on by my department as a social worker and were therefore eligible because they were indigent, giving the impression that they were eligible to come into the Sanatorium, and everything was on the up and up professionally speaking, but actually they didn't want the applications to come to my department; they would come to the Finance Department, the Fund Raising Department of the Sanatorium and would simply as a formality have me appear before their Admissions Committee to say everything had been okayed. There was an unprofessional thing, and I would have no part of it. I refused to be a party to it, and they dismissed me over that reason as will be verified by many prominent social workers in town. It can be verified by them.

After I was fired there at the end of '49 or the beginning of 1950, I, to use a common expression, was fed up with social work if that was the kind of situation you met with. I was interested in law. I planned after I came to Los [fol. 6] Angeles to study at night. It didn't work out. I had been in the Army and had a growing family and couldn't do it right away. Since I had the G.I. Bill available to me at the time, and they gave me substantial severance pay from the Sanatorium, I decided this was the time to go ahead and study law. That is what I have been doing.

Q. By Mr. Preston: Were you gainfully employed after you left the City of Hope in January of 1950?

A. Well, yes and no. That is I assisted a friend of mine, Mrs. Bass. I really can't claim I was gainfully employed. She was running a losing proposition, a weekly newspaper.

Q. What was the name of it?

A. California Eagle, and since I had already registered at S.C. and had been accepted, and was waiting until school

opened in September—at that time they wouldn't accept people in February; they did the following year, I believe, but they wouldn't admit any beginners in February—so it was a matter of marking time until September, so I helped her for about three or four months, perhaps a little over three months.

Q. That was in 1950?

A. Yes, just before school.

Q. What did you do on the newspaper?

A. Oh, I assisted her with the management aspect and [fol. 7] also wrote a weekly column. I don't recall if I did it every week, but most of the time I did. I had been doing a similar thing without salary too for the California Jewish Voice while I was at the Sanatorium, and I as I indicated had also done while at college, that is in the book review field. I had been interested in newspaper work. In fact I had once had the thought of journalism as a career but gave that up.

Q. Mr. Konigsberg, I hand you twenty-one photostatic copies of what appear to be photostatic copies of the editorial page of the California Eagle. I observe the same name as yours on a column on each of those photostats. Is that the article or are those some of the articles that you referred to? (Handing documents to witness)

A. This looks like the editorial page of the Eagle. Without reading them I wouldn't know if they were the exact articles I had written.

Q. Also I hand to you seven photostatic copies which you will find are photostatic copies of certain issues, certain of them, certain of them were small photostats. Some of them were enlarged while photostated. Would you glance at those too. (Handing documents to witness)

A. I don't recall all of these, but this is the type of thing I did write, yes.

Q. And if you will observe in the twenty-one photostats [fol. 8] I first handed to you those run from the dates July 28, 1950 to, I believe, the end of December, 1950. Will you examine those and see if that was the time when you were writing for the California Eagle.

A. (Examining documents) Yes, but you see I wasn't working for the Eagle all this time. In fact I think even after I started law school I was writing some of these on

week-ends and handed them to her. I wasn't employed all this time.

Q. See if I understand it correctly. You were employed perhaps for three or maybe four months for the California Eagle?

A. I think I started writing for her long before, not long before, but sometime before I went to work for this short period just until school opened, just on a volunteer basis. I was never paid.

Q. I gather some of those articles were written by you before you were employed, and some after you were employed.

A. Yes.

Q. Were they published with your consent?

A. Oh yes.

Q. Your name was used with your consent?

A. Yes.

Q. Would you glance at those Mr. Konigsberg, and while these large photostats are copies of seven of those there [fol. 9] are about fourteen of those which haven't been enlarged, but I think you will find entirely legible. Will you glance at those and see if they are copies of articles you permitted to be published over your name.

A. (Examining documents) Well, you have marked here which ones are enlarged? What is it you want me to answer?

Q. To merely see if those documents you hold in your hands, which are the twenty-one photostatic copies, are in fact accurate photostats of the pages of the California Eagle which they purport to be. The date is on the top of each one.

A. Yes. Well I don't know that these are the accurate photostats. I say they look like the editorial page of the Eagle as it used to look when I was with them. What way would I have of telling this was the exact photostat or not?

Q. To see whether or not you actually wrote the article is what I am driving at.

A. As I said before I wrote this type of thing. Now whether these are the exact ones, I don't know.

Q. Do you have copies of what you wrote in your private papers?

A. I have some of the columns that I wrote, yes.

Q. Would you glance through there and tell us whether or not you recognize any of those that you now have.

[fol. 10] A. (Examining documents) This one I have open here, this one about the Board of Education here in Los Angeles, I believe that I wrote something of this nature, yes.

Q. Will you glance at the rest of those.

A. Of course this is over three years ago, and I don't recall all that I may have written. What I can say is this is the type of thing we commented on in the Eagle.

Q. And from your examination you wouldn't say that those weren't the articles you wrote and authorized to be published under your name, would you?

A. I wouldn't say they weren't, and I wouldn't say they were. I would have to see the original paper, wouldn't I, strictly speaking, to determine whether this was the exact copy?

Q. That is a photostatic copy, Mr. Konigsberg. It is a photograph of the editorial pages of the Eagle on the dates which are at the top of the paper from July 28, 1950 to the end of December, 1950.

A. Well, as I said before this is the type of comment, the type of thing, that I was writing while I was there with the Eagle. It was also the type of thing I was writing while I was with the California Jewish Voice, and I might add this is the type of thing I was writing, very much [fol. 11] similar to it, while Orientation Officer for the Army and the Army orientation pamphlets I was writing. I don't recall whether the application form asks for details about military experience, but I was the Orientation Officer for the entire 7th Army in Europe. I was in that program for a little over three years as a Captain, and my job was to prepare discussion outlines on political issues, because as you may know the Army orientation program is a political education program, and General Marshall had Orientation Officers appointed in each of the Armies. I was the one in charge of this program in the 7th Army in Germany and France, and regularly not only did I write this material for the discussion outlines, but I also edited three Army newspapers for the Army, that is the 7th Army, in which this type of material was prepared.

Q. Did anyone else ever use your name in writing for the California Eagle?

Q. I have no way of knowing.

A. Did you ever know of anyone else using your name in writing for the California Eagle?

A. No, I can't say that I did know of anyone else using my name. I have no way of knowing.

Q. But you never noticed any such thing while you were doing some work either on a voluntary basis or otherwise during the last half of 1950?

A. No, I can't say that I did.

[fol. 12] Mr. Preston: Mr. Chairman, I would suggest that these photostatic copies be marked as exhibits and included in the file.

Mr. Sterling: All right.

By Mr. Preston:

Q. Mr. Konigsberg, you said you wrote the same general type of material for the California Jewish Voice?

A. Yes.

Q. When was that, during what period?

A. During the period I was working for the Sanatorium. Let's see, that would be, well I left the Sanatorium the end of '49, but I stopped writing for the Voice about a year or so before that. I think it was once every two weeks. This was also on a volunteer basis for the Voice.

Q. That would be about the end of 1948?

A. Somewhere near that.

Q. And I assume you commenced that writing about the middle of 1946?

A. I don't really remember when I began.

Q. Did I understand you correctly to say that you came out of the Army in about the middle of 1946?

A. It was March or April, March I think it was in '46.

Q. It was shortly after you came out of the Army that you commenced writing for the California Jewish Voice?

[fol. 13] A. I don't think it was too long after. I don't remember. I went to work right away back at my old job at the Sanatorium. I don't remember how soon afterwards I started writing for the Voice.

Q. What were the names of the three Army newspapers you said you edited?

A. There was the first one— Let's see if I can remember the names now. I can tell you the stations where it was. The first one was in the Fort Devins General Hospital which was in Fort Devins, Massachusetts. This was a mimeographed Army orientation bulletin which I prepared practically the whole thing each week. These were all of course weekly publications. Then when I was in Africa with the Second Convalescence Hospital, it was part of the 7th Army, I don't remember the name we gave it—Oh yes, the Duffle Bag. The one at Fort Devins, I don't remember the name of that one. And then the third one was from the Headquarters of the 7th Army at Heidelberg, Germany. I don't remember the name of that one. I have some copies of it at home though. I think it was called I and E, Information and Education News.

Q. Would you care to submit those copies you have home for our examination?

A. Yes.

Q. If you will, please.

A. I will be glad to.

[fol. 14] Q. In the routine examination, Mr. Konigsberg, I assume that you know all applicants get a routine examination.

A. Yes.

Q. We obtained a press clipping to the effect that you had been subpoenaed before the Senate Fact Finding Committee on Un-American Activities.

A. No, not the Senate Committee. As I wrote in my application it was the House Un-American Activities Committee.

Q. I was referring to the State committee sometimes known as the Tenney Committee.

A. Yes, the State Senate Committee, that is right. I appeared before them, I don't remember the date either, about '47 or '48 as I indicate on my application, before the Tenney Committee, yes.

Q. Did you state that in your application?

A. Yes. Also the Dilworth Committee which I think was a sub-committee of the Tenney Committee.

Q. Dilworth?

A. Dilworth Committee.

Q. Did you testify before them?

A. Yes, I have that.

Q. Did you happen to have a copy of your testimony before that committee?

A. No, sir, I didn't have it. The committee never gave [fol. 15] me any, and I had no copy of my own.

Q. Did you present them with any written statement?

A. I don't remember. I am pretty sure I didn't present one to the Dilworth Committee. I may have to the Tenney Committee, but I don't remember.

Q. We have a copy of what appears to be a statement handed to the Committee by you which we obtained upon checking after reading the newspaper clipping, also on the top of that you will observe what appears to be a copy of a letter from you to the Tenney Committee. Do you have any recollection of writing the Committee such a letter?

A. (Examining documents): Yes, I do remember this.

Q. Will you glance at the statement attached to that?

A. This is the statement I was referring to that I gave to the Tenney Committee. At least it looks like it. Do you want me to take time to read it?

Q. Look it over and tell us whether that is the statement you submitted to the Tenney Committee.

A. (Examining documents): Well, there are a number of errors in it, typographical errors, but this sounds like the statement I may have handed to them. How can I be certain having written this, if I did, three years ago, no, five years ago, that this is an exact copy? I don't know. [fol. 16] You say this is the original statement I handed them?

Q. No, that merely purports to be a copy of the statement you handed to them. You will observe in that first letter——

A. Here. (Indicating)

Q. The one that you wrote to Senator Tenney, I believe, in September, 1948.

A. Yes.

Q. That you were referring to typographical errors on the first page. Do you recall whether those errors were in your copy or in a transcribed copy?

A. I don't. I don't think I ever saw a transcribed copy. You mean of the hearings?

Q. Yes.

A. I honestly don't remember. I don't think I saw any copy of the Committee hearings, and yet, well that raises the question what errors was I referring to. It must have been some copy they made of the statement I handed them.

Q. That is the reason I asked the question.

A. I really don't remember what copy I was referring to where these two errors appeared unless I saw some kind of statement. I don't remember seeing it.

Q. The errors that were referred to are properly described as typographical errors. I noticed one was "war" [fol. 17] and should have been "way." It makes no sense if it is war.

A. That is the one I referred to here.

Q. And there are a couple of other typographical errors of the same type in the statement. Did you notice them?

A. Yes, as I looked through it now.

Q. Except for those obvious typographical errors would you identify it as the statement you handed to the Tenney Committee on the occasion of your hearing?

A. I can't honestly say that. I don't remember since it was five years ago. As I said at the start I recall handing them a statement. Whether this is the detailed statement I just don't remember for certain. I don't remember what I told them five years ago.

Q. From what you have read would your best judgment be it is a copy of that statement?

A. Well I can't say that either.

Q. Do you have in your personal effects a copy of the statement which you handed to them?

A. No, I don't. I know that because I was looking for a copy when the application asked the date; when I thought I had to put the date of the hearing, I wanted something to indicate what the date was, and I couldn't find anything that would give me the date, and if I had a copy I would have had this date on there. So I just do not have a copy. [fol. 18] Q. May I see the statement? (Examining document) Do you recall whether or not you had your name on the top of the statement that you handed to them?

A. No, that I don't know. That is the form of the statement?

Q. Yes, as you handed it into them.

A. No, I don't remember.

Q. Were you in the U. S. Army for three and a half years?

A. Yes.

Q. In the United States, Africa, Italy, France and Germany?

A. Yes.

Q. As an Orientation Officer?

A. Yes.

Q. Responsible for the political education of thousands of our soldiers?

A. The program I was responsible for served some 400,000 men in the U. S. Army.

Q. "In my last post, with the rank of Captain, I was the chief orientation officer for the (blank) U. S. Army in Germany supervising the program for over 400,000 soldiers." That blank was referred to in your letter as a fill-in for Seventh?

A. Seventh U. S. Army.

[fol. 19] Q. Have you looked through any other parts of this? Let me read another sentence and see if you can recognize this, picking it at random at the bottom of Page 2: "You deliberately manufacture the Red scare—a tested Hitlerian technique—to conceal your own reasonable failures to meet our people's needs, to divert our attention from your ultimate purpose: to oppress and enslave Americans and dominate the world." Do you recall that?

A. No, I don't recall making that statement, but it is not inconceivable that I could have made such a statement since this was the sort of thing we were discussing in the Army orientation programs, and this is, according to the date, shortly after I returned from the Army.

Q. You remember saying something like this, again picking a statement at random here on Page 3: "As a Jew, I accuse you of planning an America in which my people can find no security. You are capable of doing to us what the Nazis did.

"As a veteran, I accuse you of betraying all the promises

our government made to Americans when we went to war." Do you recall making a statement like that?

A. I don't recall making that statement. If it is in that record, if this is a true copy, I may have made the statement. I don't recall making it.

[fol. 20] Q. Is that something of the same type of statement that you made in these publications while you were Orientation Officer?

A. Yes, it would be very similar to that. I wonder if I may take a second to explain the orientation program.

Q. Yes.

I think that would help, and because it was the experience that I had in the orientation program as an Army officer that impressed upon me the importance of many of these issues that I have been discussing in these articles that you are referring to from the California Eagle, for example. You see, when General Marshall—and I had personal experience with this because I was in the Army at the time at the hospital where the wounded were coming back from the first North African invasions, and we were told this by General Pillsbury, who was then the Commanding Officer of this particular hospital I was in, rather Army post—saw that the greatest single cause of casualties of these people coming back from Africa was due not to enemy gun-fire or illness or accidents, which as I understand were the three general causes or three most general causes of casualties, but due to mental breakdown of the G.I., he sent a team of experts, Generals and psychiatrists and psychologists, to North Africa to determine what the reason was, and these men came back and told General [fol. 21] Marshall the reason so many G.I.'s were cracking up was because they just didn't know why they were fighting, they didn't know why they were asked to give their lives. They told them the G.I. had to be educated so they would understand why this country needed them, and why as a citizen he had to give his life if need be for the protection.

As a result of their recommendations this Army orientation program was developed, and many of us were picked out of various ranks. I was the Commanding Officer of what is called the Detachment of patients who had had either public relations experience or teaching experience,

and was asked to give series of lectures there at the school for the wounded G.I.'s, of those coming back from North Africa. As a result of this experience, because the Commanding General there and the others in charge of the First Service Command in Boston, which we were part of, felt I was doing a good job they sent me to the Army Staff Training School at Lexington, Virginia, Washington and Lee University, where we were given a very intensive course in the political objectives of the war, and that in essence is what it was, and that these political objectives were to be impressed, indoctrinated into, if you will, to use the language of the Headquarters, into the G.I.'s so they would understand why they were being asked to make these sacrifices.

[fol. 22] After I completed this course at Lexington, at Washington and Lee University, I was then sent overseas and first landed in North Africa with the 2nd Convalescent Hospital and was made the Orientation Officer there, and my job there was in effect a continuation of what I was doing at the hospital in Fort Devins, first to lead discussions. We had regular discussions every day with different groups of G.I.'s, of course, but each group would come at least once a week, and also with the officers, because this program applied to officers as well as enlisted men, and not only lead discussions but to train discussion leaders so others could spread out and lead discussions, and also to write discussion outlines and to edit these papers I referred to. I remained with the same outfit, the 2nd Convalescent Hospital, when we went into Southern France, and while there we were stationed near I don't remember what town, but we were stationed there for a while, and from there I went to the Headquarters in Germany, then Auxberg, later Heidelberg, was made Captain and made Orientation Officer for the whole 7th Army, in which job I had to do various things, of which editing the paper was just one of the minor things. I set up and organized and picked a staff to train discussion leaders at regular schools, in which G.I.'s were pulled in from units all over the American zone and trained as discussion leaders, and to do other functions [fol. 23] such as writing discussion outlines and preparing these various bulletins that we used, and then whenever

necessary to lead important discussions at the Headquarters itself which I would do personally as the officer in charge, and then to go to various units all over the American zone and lead discussions with officers and men.

Now I was very much impressed, obviously profoundly impressed with the importance of this work, because as General Marshall pointed out, and in many of the publications we got as part of the orders to continue this program, and General Eisenhower at the time also sent us many instructions that it was not enough even to help the G.I. understand why he was fighting there, he had to be taught that when the shooting was over he had to carry on his responsibilities as a citizen when he got back home. Well I believed that then and I believe it now very strongly, and that recent history has demonstrated to us there and elsewhere in the world that a totalitarian form of government can take over if the citizens aren't alert, and it is obvious from my record even long before the present period I have always tried to be an active and responsible citizen, whether it was in working for a playground in my community or as I have been a candidate for the School Board twice in this community, or as Mr. Tenney refers to there in this hearing I was on the Board of the California Labor School [fol. 24] which is now defunct, and in such activities I have tried wherever possible, in campaigns, for example, far back in the campaign with Governor Olson, and in recent campaigns in our district I was a candidate for Assembly in 1950, I have felt it was a vital responsibility to help preserve the gains we made by this victory over the forces of the enemy during World War II, and it is in carrying out that responsibility that I have done these other things.

And it seemed to me that I was simply continuing as a civilian what I had been taught to do, and I felt very much it was the right thing to do to carry out my responsibilities first in the Army and then secondly as a civilian after the Army. The distinction wasn't too great being a civilian or being in the Army, we are fighting for the same thing. In one you are in uniform and in the other you are out of uniform. That very simply is the explanation of this. To me this thing has been a matter of basic principle. I know and am not being naive about it, and not assuming you gentle-

men are naive about it, I know that in view of the temper of the times today that many people would look with disfavor upon comments such as those referred to here, but remembering the effect of three and a half years of Army indoctrination of this thing—and I say it in a very favorable way; I don't mean Army indoctrination in an unfavorable [fol. 25] way—this is a thing I should have been taught, that I was glad to learn and glad to carry on. I realize that these things look differently today in the light of the temper of the times today, but I still feel very strongly that an individual, if he is at all active as a citizen as I tried to be in all my adult life, and as you know I am older than most law students, I am now forty-two, I started my study very late, that a person who is active or has been active—of course I have not been able to do anything for the last three years because all my time has been devoted to studying law—that when you have all kinds of suspicions circulating in communities that inevitably it is the person who has been active who is suspicious. Otherwise whom else would they direct suspicions to?

So that simply is a very obvious and honest explanation of the attitude that I have expressed not only in material such as this, but in public speaking throughout the community on various occasions. All of this was done without any pay, simply as a part of my duty as a citizen carrying out, as I said before, things that I felt bound to do as an officer in the Army and as I enlisted to do, because as you can easily verify the President of the Sanatorium I was working with at the time, that is the City of Hope, tried to get me excused from the Army—deferred is the word—after I enlisted, but I refused to accept it. I was even offered double the salary to stay with the hospital. On the [fol. 26] basis of being Administrator of the hospital I undoubtedly could have been deferred. Many such people were being deferred at that time. I insisted on going in. I felt it was my duty to. That is the explanation for this.

Mr. Sterling: I take it, Mr. Konigsberg, the totalitarian form of government is repugnant to you.

A. Very definitely.

Mr. Sterling: I assure you I don't want to get into a debate on the subject, but the thing that strikes me about the

editorial line expressed in your writings in the Eagle is that it is not anti-communist, and I should think you would now realize that the communist government as it exists in Russia is a totalitarian regime and that therefore you would *be anti-communist* in your orientation of the citizen.

A. I grant you. This is, of course, the thing I was referring to a minute ago. During the period these articles were written, as I said this is the type of thing I wrote. I can't swear it is the exact thing I wrote obviously. During the time these were the issues that were bothering the people of the country, at least as I saw them. I dont' have access and neither does any other private citizen have access to all the information our responsible leaders have, and so on. The issues that I commented on were of course those that [fol. 27] seemed important to me at the moment, and I could repeat a thousand times I am antagonistic to a totalitarian form of government, but when you have a weekly column, not a daily column, and a very limited one—I think my limit was 200 or 250 words—you can't cover all of the situations, and if you will note this, plus the material I said I would bring in, these Army newspapers that I had that I edited and wrote for, you will see that it is simply a continuation of this, the same very issues. As a matter of fact we were very definitely instructed in the Army, I have this statement or the printed memorandum signed by General Marshall and Eisenhower which points out the role that Russia at the time was playing as an ally. For example I remember specifically getting quite a reaction from the G.I.'s when discussing Russia's role in the Finnish War, over the signed signature of General Marshall we were instructed to tell the G.I. Russia's role in the Finnish War aided us because Russia would be stronger and would therefore be stronger as an ally during World War II which followed shortly after the Finnish War. You can see for over three years this sort of thing I was writing about and being instructed to talk and write about. I don't say in a sense I did it reluctantly. I accepted it as the truth. I believe it now as the truth. The fact that certain groups changed their views on what was accepted as the truth about the Soviet Union or Russia, whatever you choose to [fol. 28] call her, that doesn't change the basic nature of

certain facts or conflicting views. I have nowhere advocated—and I think if this is a complete listing which I don't know of the articles that I wrote—anything but the strengthening of the democratic government.

I might refer you to the latest thing I have written which is on file at the U.S.C. Law School. It is a fifty-nine page paper on Justice Black's opinions, dealing not with this issue but related issues, opinions on free speech and so on during the present period in which the thinking is just the same.

Mr. Sterling: Don't you see some analogy between Germany's invasion of Poland and North Korea's invasion of South Korea and subsequent events with the Chinese Communist support of North Koreans?

A. May I repeat it? You mean Germany's invasion of Poland?

Mr. Sterling: Don't you think that the Korean business was an indication of aggression by a form of government which appears to be totalitarian?

A. You mean whether it is really the Russians that invaded North Korea, that came through North Korea?

Mr. Sterling: The Chinese.

A. Frankly I am not convinced that is what happened. It may be so that North Korea invaded South Korea. I [fol. 29] am not convinced some foreign nation invaded South Korea. I think you are saying they sent troops into South Korea to invade.

Mr. Sterling: Not troops, but material support.

A. There may have been. I thought you were referring to an actual army. There may have been material. I think they made the statement at one time they were furnishing supplies, did they not?

Mr. Sterling: I don't know.

A. I think they stated that.

By Mr. Preston:

Q. Mr. Konigsberg, as I recall one of these editorial it in effect talked about the liberation of the countries in Central Europe and criticized the complaint of certain newspapers and forces in this country accusing the Soviet Union in effect as engineering the take-over of the countries in Central Europe. As I understood your article it was in defense of the so-called liberation of the Central European countries such as Czechoslovakia and so forth. Do you recall that?

A. No, sir, I don't. Do you have it here? May I just have a drink of water, please.

. . . A ten minute recess was then taken . . .

By Mr. Preston:

Q. Obviously the article I referred to is in one of the small mimeographs, and I have not yet located it.

A. I just don't remember it.

[fol. 30] Q. Would you put that in that same category?

A. Which category?

Q. Of political education. I gather what you have told us is that you are endeavoring to carry on a political education to protect now the civilians from any kind of a Fascistic control.

A. What did you say, I am carrying on a program?

Q. By these articles. Is that what you intend to do?

A. Are you referring just to the articles or what I have been saying about my activities in general?

Q. I was referring now to these articles.

A. I had no specific program in mind. I just felt as a citizen I was expressing my views, and each of us has a responsibility to inform others or try to inform others or help others understand the basic issues of the time, not on the basis of any formalized program, if that is what you mean.

Q. I had in mind the object you were trying to accomplish.

A. The object of the Army educational program.

Q. Now civilian?

A. But not a formalized program. What I mean is

simply that when the occasion arises I think a citizen has a duty to express his opinion if the situation warrants it. You don't get on every street corner and spout your opin-
[fol. 31] ion, but in a club meeting or private conversation, and in this case I had the opportunity with the newspaper simply to express my views.

Q. Mr. Konigsberg, to whom is the California Eagle largely distributed, do you know?

A. Primarily to the Negro people in Los Angeles. Of course this was so then. I don't know what the situation is now.

Q. Referring to the period of 1950 when you were familiar with it that was true?

A. Yes.

Q. Do you recall your editorial headed, "The Gangsters, Incorporated", under your name which appeared in the California Eagle on October 5, 1950, one of the large photostats I showed to you?

A. I don't recall the contents. (Examining document) What is your question about this one?

Q. Do you recall it?

A. The only thing I can say with respect to any specific column is this is the type of thing I was writing. Whether this is the actual one, I don't know.

Q. It puts over the general idea that you were espousing, is that correct?

A. Well when you say general idea, what do you mean, this educational concept that I had?

Q. Yes.

[fol. 32] A. Well I think one can say that.

Q. And from having glanced at the article you would say that is one you might well have written during that period?

A. Yes.

Q. Do you believe that that is helpful education to the citizenry generally?

A. Well the basic idea here from a quick glance at it was that the criminal element is not only those that rob, kill and so on and so forth, but those who steal from the people in the way of large sums by appropriating them to people who are not friends of America. Let me refresh my memory. Of course I don't recall all that is in it. That

we the people are deprived, as I say here, of even half of the standard of living, or when people are underpaid or the toll that prejudice takes between people, for example, you have often heard it said that the cost of prejudice against the Negro people is a financial one as well as political and an economic one because of the degrees in efficiency; generally loss of living standard, loss of citizenship of groups involved and so on. That type of stealing is what I was referring to, a deprivation, lowering not only of living standards, not only of economic standards, but the political standards, not raising the level of political and social relationships in a community. This is the type of thing, as I [fol. 33] recall, I would say. Is this what you mean?

Q. Yes. What I frankly am trying to ascertain is understand your viewpoint. I trust you will appreciate that while you have been doing some of these things without pay as your sense of duty, so the members of this Committee without pay are obliged to check into things of this nature and I referred you to this editorial, "The Gangsters, Incorporated", to ascertain whether or not you felt that this was a beneficial bit of education, something that would help America, help its citizens.

A. I may have felt that at the time.

Q. Do you still feel that way?

A. I would say that I still feel that any deprivation, any lowering of living standard, any deprivation of civil liberties is a loss to America, yes, any act, official acts or even unofficial acts. For example, just this morning in the course in Constitutional Law we were reviewing and it was pointed out in the case of Marsh vs. Alabama where people were denied the right to congregate—this was a religious freedom case—on the streets of a company town, and the discussion which followed this review course I am taking, it was emphasized that the holdings of the Supreme Court of recent years have been that any deprivation of rights, whether in a company town or whether it is prevention, for example, of adequate representation on juries of Negro people or in school systems, in the actual school facilities, [fol. 34] that all this is a loss to American democracy, and I do believe that.

Q. Let me be specific and just read here, pick out of the middle here a couple of paragraphs.

A. Just picking out a paragraph from the context isn't always . . .

Q. I will take the whole paragraph. I will take two of them: "Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as 'killers'. No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the 'American way of life' we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.

"None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attorney-General who denies us the right to bail and tells brother to spy on brother." Now that is two paragraphs taken from your article as indicated. What I am asking you is do you feel that that is the proper approach educational-wise for a person who seeks to be a member of the Bar? I am just trying to get your personal view. I am not criticizing. I am just asking.

A. Well as I say I don't recall what my thinking was at [fol. 35] that time when I wrote it, but I would question that today in view of what has transpired since.

Q. I notice at the bottom of this editorial it has in large letters "ACCOMPLISH YOUR MISSION! SIGN THE PEACE PETITION!" To what peace petition does that refer, do you recall?

A. That I don't recall. There was a bunch of peace treaties.

Q. This was in October, 1950. Wasn't that the circulation of the Stockholm Peace Petition?

A. I don't recall. There were several peace petitions, one after the other. It may have been that one, but I don't recall that specifically.

Q. You have referred to the fact that you testified before the so-called Tenney Committee here in California.

A. Yes.

Q. Do you recall being asked as to whether or not you ever participated in the activities of the California Legislative Conference?

A. I don't remember that specific question.

Q. Did you ever participate in the affairs of the California Legislative Conference?

A. Just which is the California Legislative Conference? There were a number of organizations that had similar names.

[fol. 36] Q. It is the one that had the publicity as being a communist dominated organization. Taking you back to the time of your testimony which you have identified as being back in, I believe you said 1947 or 1948, this record indicates you testified September 7, 1948 in the State Building here in Los Angeles.

A. Well I don't recall what work the California Legislative Conference did. There is an organization now the California Legislative Conference. Is this the same one? As I recall there were several organizations with similar names.

Q. California Legislative Conference, the time is September, 1948, this is the answer the record indicates that you gave: "It is a matter of public record I participated in the Legislative Conference, and I gave a report there." Does that refresh your recollection?

A. No, it doesn't. I don't remember that.

Q. You don't remember it?

A. No, I don't. As I say I was active in various ways. I just don't remember that incident or that organization.

Q. You a moment ago mentioned work in the Labor School, was it?

A. California Labor School. This was not work there but I was on the Board.

Q. On the Board?

[fol. 37] A. Yes.

Q. The Advisory Board?

A. Yes, I think it was called the Advisory Board. Of course it is now defunct.

Q. Is that the same Labor School that was characterized by the Tenney Committee as being communist dominated?

A. Well that may have been. Mr. Tenney characterized a lot of things as communist dominated.

Q. Had that been so characterized while you were still working there?

A. That I can't honestly say, because right after that

hearing the thing folded up, the hearing at which I testified. I don't think it was in operation after that. At least I was never called to a Board meeting.

Q. Have you ever heard of the People's Educational Center?

A. Wasn't that the California Labor School?

Q. I believe it was a separate group.

A. No, I don't recall a separate organization by that name. California Labor School at that time had classes for trade unions downtown, and I don't recall any separate organization. Was this a division of the Labor School?

Q. No, People's Educational Center.

A. Then I don't know.

[fol. 38] Q. Do you recall being asked this question: "Q. They are also in Tom Clark's list as a Communist organization." That is referring to the prior questions. Here is the question in context: "Did you ever hear of the People's Educational Center?"

Your answer: "A. Yes sir.

"Q. Were you ever a lecturer there?

"A. I was very proud to be a lecturer there.

"Q. When did you lecture there?

"A. I don't recall the exact date.

"Q. Was it in the fall of 1947?

"A. It may have been.

"Q. How long ago?

"A. It was sometime in the past year."

Do you recall that?

A. No, I don't recall that.

Q. One more question and answer:

"Q. What did you lecture about?

"A. I lectured about my observations in Germany and what the Fascists did in Germany and what they are trying to do in the United States."

Do you recall that?

A. I don't recall that experience at all.

Q. Do you know who—

A. I don't remember that there was a separate organization called the People's Educational Center.

[fol. 39] A. Who was Sidney Davidson?

A. I don't know.

Q. Don't you recall Sidney Davidson?

A. No, I don't. May I ask is it made clear this P.E.C. was a separate organization of the Labor School?

Q. No, it is a separate question, and it appears to be a separate organization. You have no recollection of it?

A. No, I don't. I don't remember any separate organization by that name.

Mr. Wright: Did you ever teach at the California Labor School?

A. No, I never taught at the California Labor School.

Mr. Wright: Lectured?

A. No. As indicated I think once, was this shortly after I referred to the period shortly after I came back from the Army? At that time in various places over the community, maybe a half dozen places, I gave a report on my experiences in the war. I think as a result of the articles I had written or was writing for the California Jewish Voice several people called up and asked for this columnist to come and speak, and that is why I say I don't remember any separate organization P.E.C. I remember speaking at several places about my experiences in the war.

[fol. 40] Q. By Mr. Preston: Do you have any copies of the California Jewish Voice and the articles you wrote?

A. No, those I never kept.

Q. Do you remember that Mr. Tenney asked you this question:

"Q: Have you ever been or are you now a member of the Communist Party?"

A. Oh yes, he undoubtedly asked that.

Q. Did you answer the question?

A. I don't remember what I told him then to tell you the the truth. I probably did not answer. I probably didn't. I don't remember.

Q. Well, frankly, so we won't waste any time I don't think you did either, but there were lots of words.

A. This was in '48?

Q. This was in '48.

A. I don't remember exactly what I said. I don't think I answered.

Q. I assume that you are acquainted with the State

statute that we now have on our books where among other things we are obliged to inquire into this type of a thing, and where we find that any people appear to have the views of endeavoring to change our government and so forth by force or violence, or in other words the popular conception of communism that we are expressly prohibited from certifying that person. You are familiar with the statute?

[fol. 41] A. Yes, I am.

Q. Mr. Konigsberg, are you a Communist?

A. Mr. Chairman, I would be very glad to answer that question.

Q. If you will answer the question, I would be very happy to have it.

A. I would be very glad to answer it if the circumstances were different. That is when I am faced with a question of this kind or when anyone else is faced with a question of this kind today what he is faced with is the fact that various nameless accusers or informers, or call them what you will, whom he has never had a chance to confront and cross examine, he is put in a position of answering these statements or accusations or suspicions, and without any of the protections that ordinarily exist in such a situation, and I don't think that I can place myself in that position of having to answer something out in the void, some statement. I know these statements have been made obviously. I am not pretending to be shocked or naive about this. I can say very definitely I did not, I don't, I never would advocate the overthrow of the government by force or violence clearly and unequivocably, but to answer a specific question of that kind, whether I am a member of this party, that party or the Communist party, that puts me in the position, what-

[fol. 42] ever the truth is, whether I was or wasn't you would get a dozen informers who would say the opposite, and as indicated by an editorial just two or three days ago in the Daily News questioning seriously why the word of these informers, these turn-coats is accepted unquestionably as against the word of other responsible citizens. Therefore, Mr. Preston, I do not think that under these circumstances, first, yes, I understand that under the law as it is today you may ask me specifically do I advocate the overthrow of the government by force or violence. I

answer specifically I do not, I never did or never will. When you get into the other question of specific views in a political party, it seems to me only the fact, the right of political opinion is protected under the First Amendment and is binding on the states. Certainly attorneys ought to be in the leadership of those who defend the right of diverse political views. I think the First Amendment is important. I don't know what else I can add except that I think that attorneys, let's say the Bar Association, ought to be in the forefront of those defending the right to divergence of political views, and that I don't think any individual can be or should be placed in that position, unless of course it were a situation where you had the right to confront the other individuals or the sources. Frankly I don't have much regard for the statement of a Mr. Tenney and many [fol. 43] other people don't. His opinion of what is a good American isn't my opinion. I will state that very frankly. So his statement about me doesn't concern me, doesn't bother me, but when we get down to the specific point and what you are touching upon now is the area of free speech or the right to diverse political opinion, it seems to me that attorneys should be in the front ranks of those defending that right, and I answer again on the specific question of force and violence, I did not, I don't and never would advocate the overthrow of the government by force or violence.

Q. When answering it you don't intend to give us a specific, categorical responsive answer?

A. As I said I would be very happy to if we met out in the hall. I would be glad to answer you, but you see under these circumstances, that is I am speaking now under oath and I am speaking for the record, I am speaking against in a sense whatever evidence that may be in the files—I shouldn't dignify it by calling it evidence; I should say whatever statements may be there from various informers. I have told you about my record both in the Army and in the community. I have been active politically, I admit it. I am proud of it. I would be happy to discuss it. This is the record that I think should be the basis fo judgment, not the record of some hysterical characters that appeared before the Tenney Committee or any such group.

[fol. 44] Q. I am not asking anyone else. I am trying to

ask you because you are the one who is seeking admission, the privilege of practicing law in this state. That is the reason I am asking you the question. I made the question very broad, and what I would like you to tell us, if you will answer the question; now of course as you well know and you have told me in your answer up to this point, you don't have to answer the question, of course you don't have to answer the question, but we feel that on a matter of this kind, this kind of information, we have a job to inquire about your character. The statute says character, it doesn't say reputation. The only way I can find out and aid this Committee in finding out about your character is to ask you these questions, not what someone else thinks about you, your reputation. That is the reason I have asked the question. Could you give us a categorical answer?

A. I can only give you the answer I have given you, and I would be very happy to answer that under other circumstances.

Q. In other words, you feel that asking you that question is a violation of your constitutional rights?

A. Of free opinion, free speech, yes. I might refer you, Mr. Preston, to an editorial in the American Bar Association Journal. I don't recall the exact date. I used it in [fol. 45] connection with this paper I wrote for the U.S.C. Law School, where the editorial and commenting on an article that appeared in the very same issue. I think it was December, 1950, about that date. The article dealt with a former German jurist, I believe he was, or else he was a lawyer, in which he pointed out how the system of the administration of justice broke down in Germany, and he pointed out that one of the things that led to this breakdown was the activity that some segment of the legal profession there indulged in and/or failed to indulge in by protecting the rights of the people there. The editorial cautioned the Bar in this country to avoid the same error. That is why I have said several times this afternoon that I think the legal profession has to be in the front ranks of those defending the right to diverse political opinion. I am referring to the freedom of free opinion and free speech.

Q. Mr. Konigsberg, have you ever knowingly partici-

pated in an organization which you then believed was sympathetic to the communistic cause?

A. No, I can't say I knowingly did that, because I don't think it would have made a great deal of difference to me if I had known one way or the other, assuming that the objectives such as those I have told about in the Army orientation program and so on, whether it might be a School Board election, and as I pointed out I was a candi- [fol. 46] date twice sponsored by the Citizens Committee for Better Education. I don't recall the specific issue arising, but if you are asking me I don't think it would have made a great deal of difference to me who was supporting the organization or the campaign if the objective was the same, say a better School Board or whatever the issue might have been.

Q. Mr. Konigsberg, I assume that you know that your name has been listed in the public press by witnesses before the Congressional Un-American Activities Committee.

A. Yes.

Q. And have been identified by persons who said that you were a member of the Communist Party at the same time they were.

A. I saw that report. That is the sort of thing I was referring to a moment ago when I referred to the various accusations.

Mr. Preston: I haven't any other questions.

Mr. Wright: Mr. Konigsberg, are you familiar with the stand taken within the last several months by the American Association of Universities?

A. By the Wieness: What stand do you mean?

Mr. Wright: With reference to membership in the Communist Party.

A. You mean whether they should be teachers on the campus?

[fol. 47] Mr. Wright: The specific stand I had reference to was whether or not teachers properly should when asked by their colleagues were they or were they not members the stand was, as I recall it, that they should not resort to the protection afforded for that purpose because

they owe full candor to their college. What is your belief concerning that stand?

A. I think you are referring to the Fifth Amendment.

Mr. Wright: Yes.

A. Well I am not urging that at this time or not discussing it. I didn't claim it. I don't think I am on trial here. I am simply saying that I was only referring to the free speech guarantee of the Constitution. Now I think what you are referring to is the fact that some of the professors, I believe, were claiming the Fifth Amendment guarantee, were you not?

Mr. Wright: I believe some of them were, but I am referring more to the basis, the underlying—what I conceive to be the underlying—reason for that stand of the Association, namely that each teacher owed his college full candor concerning his beliefs, his memberships, and his activities. Do you subscribe to that, or do you disagree?

A. Well if I understand you correctly you mean that a professor, let us say, on a campus should tell his colleagues [fol. 48] what his political views might be.

Mr. Wright: Yes.

A. No, I don't think that is indicated at all. Why? If we have a guarantee of the right to your own opinion I don't say he shouldn't tell it, but to compel him to tell it, no, I don't. You asked me whether I agreed he should be compelled to say it, is that what you were asking?

Mr. Wright: When the problem of whether or not he should continue to teach is before—

A. I wasn't referring to whether he is qualified to teach or not. I thought you were asking me whether he should be compelled to divulge to his associates what his political views are.

Mr. Wright: In this sense his employer being the university.

A. Well if the First Amendment means anything doesn't he have a right to whatever views he holds?

Mr. Wright: Yes.

A. If he is to be compelled to divulge them then that right is meaningless.

Mr. Wright: No.

3—5

A. Perhaps I don't understand.

Mr. Sterling: Let me try to clarify it as I understand it. This Association of Universities takes the position that complete candor on the part of the teacher with respect to [fol. 49] his political beliefs, and in particular whether or not he subscribes to the beliefs of the Communist Party is a prerequisite to continuing in the teaching job. He doesn't have to disclose whether or not he is a Communist or is sympathetic to the Communist beliefs, but that if he doesn't answer those questions with complete candor he has lost his right to a position in the teaching community. Translating that into terms of an Association of lawyers such as our State Bar or any Bar Association, you are seeking admission to the profession and that we as your prospective colleagues have a right to *expect complete candor from you* on this particular question, and that if you don't wish to be completely candid with us then we are justified in saying you don't belong in our profession. That I think is the stand that the American Universities took.

A. I understand that. I can only say what I said several times already. Under those circumstances the constitutional guarantee of free speech means nothing, if it doesn't mean you can keep your views to yourself, and certainly lawyers recognize that and should be among the first to defend that right. I think the legal profession, particularly the leaders of the legal profession, should be the first to insist on it. Put another way, of what meaning is any constitutional guarantee if it becomes a crime to invoke that guarantee?

[fol. 50] Now I understand—I am old enough to understand—and I know you gentlemen are too that there are passing moods and passing periods in any country's history. Today this seems to be a very difficult period. In a few years I think the situation will look different, as it did a few years previously. I think it will be recognized again. I say this as a former teacher of American history. I taught in high schools in Cleveland. You are familiar with American history. I am somewhat familiar with it. There have been periods like this too that understanding the basis on which the constitutional guarantees were developed to begin with, to participate in what I think is an undermining of them I cannot do no matter what the price

is, because it seems to me that any constitutional guarantee is meaningless if it becomes not a crime necessarily to invoke it or if it becames a penalty, or if you suffer a penalty for invoking it. You gentlemen are familiar with situations in American history. I can't go along with that view. I don't think it is true. I don't think it is good history, and I don't think it is democratic. What guarantee is there in a Constitution if you become penalized for invoking them? What do they mean then? And as I have indicated before, this is such a profound matter of principle with me that no matter what the price is I cannot give it up. And surely leaders of the Bar, and I assume, not knowing any of you gentlemen, but by virtue of your position on the Commit- [fol. 51] tee you are among those that lead the Bar Association, you should be among the first to combat this notion that it is wrong to use a constitutional privilege which only after many centuries of tragedies and wars and injustices was finally incorporated in the great Constitution. That is the basic principle on which I am operating.

I was aware of this problem when I started to study law, but you were aware of all this record. Everything that you have referred to transpired before I started the study of law. If you feel that there is a question of my fitness, shall we say, for the Bar, that question could have been raised three years ago. There is nothing I have done frankly since then. I haven't had time to do anything. Not that I would have in any event, but I was aware when I registered to study law, and you have my application as a registered law student, that these problems might arise in three years, and yet because I wanted so much to study law, when a man of thirty-nine decides to change his career it is no joke or lark, it is a dead serious matter, there must be profound reasons for it. That we don't need to go into. I just think I would be a good lawyer. I have had seventeen years of experience in social work, working with people, which is an experience that many lawyers do not have until they have been in the profession for many years. I think I would be a good lawyer, a helpful lawyer. I think I have [fol. 52] demonstrated I have been a good citizen.

Mr. Sterling: If you accept as true the premise that the Communist Party, as it is embodied in the present Soviet Union government, has for its objective the overthrow of

not only the government of the United States but any other non-communist government, and that that overthrow may be accomplished either from within by a bloodless revolution or if necessary by force, if you accept that premise then I think that your argument about constitutional rights of free speech and right to have your own political views and so on go by the board because then it seems to me that we are asking you no more than whether or not you belong to or believe in the principles of such *an organization as Mafia*, which is pretty generally, I think, regarded as one which has objectives that can be accomplished according to their tenets by what we regard as criminal acts. Now if I asked you whether or not you believed in the right to murder you would answer me no, I think, but as I say this whole business seems to be a turn on whether you accept the premise that the Communist Party—I am paraphrasing for the purpose of illustration—if you accept the premise that the *Communist Party believes in murder* and has that as its objective then I don't think you have a right or justification to refuse to answer the question of whether [fol. 53] you belong to the Communist Party or whether you believe in its principles, you see.

A. Well I can't argue with you.

Mr. Sterling: Well, you can say that you think my premise is wrong. You can say the Communist Party as constituted does not believe in the overthrow, is not trying to and does not have as its objective the overthrow of the United States by one means or the other. Then I simply have to disagree with you because it seems to me that is their objective.

A. Well, are you suggesting, Mr. Chairman, that since of course this is a critical period in our country's history that in the face of such threats as you are basing your premise on that we have to forego then the use of the constitutional privileges or the protection of the Constitution, is that what your proposal is? I would like to understand your argument.

Mr. Sterling: No, as I say you don't feel there is any question of constitutional privilege when in a proceeding such as this where we are charged with determining the moral qualifications of an applicant in the profession, you

don't feel that the constitutional privilege is hurt if I ask you if you believed in murder?

A. No.

Mr. Sterling: You will answer that unhesitatingly, "No, I don't believe in murder." So I say that most of us now [fol. 54] accept as true the premise that the Communist Party as we know it and as embodied in the Russian Government, the present Soviet Union Government, does have as its objective world domination by the Communist Party. So we accept that premise. Therefore it seems to us that we have the right to ask the question of applicants for admission to the Bar, because our statute as we pointed out says that you are not qualified if you do believe in overthrowing or advocate the overthrow of the United States by force or violence.

A. I am answering specifically in terms of that statute too that I do not. That is the question you are asking me specifically. I am answering I never did, I do not and I never would advocate the overthrow of the government by force or violence. I do believe like leaders like Jefferson people should have the right through discussion, ballot, the minority view becomes the majority view, that changes like that are sought through the ballot box but never through force and violence. That I do not believe. I think my whole experience has shown that. I don't know how more direct that can be, and the only reason as I said before that I don't specifically answer the question, "Are you a member of this political party?" is because of the situation anyone is in who is faced with accusations as indicated by the newspaper report, accusations by people who I think are gradually being discredited by many [fol. 55] sources, when you don't know who it is who is accusing you, you don't know on what evidence, anonymous faces, you never have a chance to cross examine them, how can anyone be put in that position? What can you fight except wind mills and air in such a situation. The direct question, "Do you believe in force and violence?" I answered that.

Mr. Black: It still puzzles me a little to see why it is that you think you are prejudicing your own position by taking

a position on that irrespective of whether there is any other evidence in the file or not.

A. Because very practically this as you know has happened before. In the theory of today it is the words of these informers that is accepted above the words of anyone else.

Mr. Black: How do you know?

A. The newspaper report says so. Isn't that the report you were referring to where I was named before the Un-American Activities Committee?

Mr. Preston: Yes, but that doesn't answer the question.

Mr. Black: How do you assume this Committee accepts the hearsay report against your direct testimony?

A. I am not assuming that. I didn't mean to give that implication. What I am saying is that where on one side we have these hearsay reports and nameless informers, [fol. 56] and I don't need to go into a discussion of how willing they are to sell their evidence, if it is evidence, when there is the possibility of their word being placed against my word or anyone in my position, and because in view of the hysteria today their word is accepted. All it has to do is appear in the paper and you are discredited. Wasn't it two or three weeks ago in San Francisco a woman won an amount in a suit for being called a "Red", a teacher, when it is prima facie—libel, whatever the case was. Then it becomes not only a basic matter of principle on the First Amendment but a matter of protecting yourself in a legal situation, because this is an official body. I am not talking to a group of people like I would be talking to on the street.

Mr. Sterling: You are afraid if you answer the question as to membership in the Communist Party in the negative and say, "No, I am not a member and I never have been," assuming you made that answer, you are afraid that we could find half a dozen people who would say that you were and had been, and therefore if you were on a perjury trial and the jury believed them and not you, you committed perjury.

A. I am saying no matter what answer I gave whether I was or wasn't, undoubtedly there would be several whom you could get to say the opposite, and as I said before— [fol. 57] Mr. Sterling: Subjecting you to a perjury charge?

A. Yes. As I said before if you want to ask me outside in the hall I will tell you, but in view of these circumstances where you just have no right, you have no opportunity rather, to defend yourself against these people, I don't think that is fair play. I don't think that is justice. I don't think it is what the American democratic system teaches.

Mr. Preston: There has been reference to the newspaper article I looked at a little while ago. It is May 23, 1952, the Los Angeles Times, and the party referred to as having identified Mr. Raphael Konigsberg is a Mrs. Bennett. Do you ever recall knowing a Mrs. Bennett?

A. I don't recall, no, sir.

Mr. Preston: I see that she was formerly married, according to this newspaper article her former husband was Charles W. Judson. Did you ever know a Mrs. Charles W. Judson?

A. No, I don't recall any Mrs. Judson. Is this Judson in the newspaper field? I remember seeing that name in newspaper columns. I don't remember knowing Mrs. Judson.

Mr. Preston: Did you recall ever knowing a Mr. Charles Judson?

A. No, I do not. I recall seeing such a name in the [fol. 58] Daily News I believe it was. I think it was a reporter by that name. I read that regularly.

Mr. Preston: I see by the article here he apparently was in the newspaper field because it mentions that he was with the Los Angeles Evening News.

A. I take that paper every day. I think I have seen that name in the paper. I don't recall personally knowing either him or his wife.

Mr. Preston: Well, Mr. Chairman, earlier I discussed with Mr. Konigsberg and read him excerpts from this statement that was from the Un-American Activities Committee submitted by Mr. Konigsberg on the hearing on September 7, 1948. I think that should be an exhibit.

Mr. Sterling: The Tenney Committee?

Mr. Preston: Yes, on September 7, 1948.

Mr. Sterling: All right, it will be made a part of the file.

Mr. Preston: Are there any further questions?

Mr. Sterling: I have no further questions.

Mr. Preston: Is there any further statement you wish to make, Mr. Konigsberg?

A. By the Witness: I can't think of anything I could add to what I said unless there is some specific point you want me to enlarge on.

Mr. Preston: I assume, of course, if I ask you the question as to if you were ever a member of the Communist Party you would give me substantially the same answer.

[fol. 59] A. Yes, I think I would.

Mr. Preston: You observed, I assumed, Mr. Konigsberg, I didn't ask you in the first instance if you were a member of the Communist Party. I asked you if you were a Communist. I recognize there is a philosophical Communist. I made my first question very broad to include that.

A. I understood you to say a member of the Communist Party.

Mr. Preston: Would your answer be any different?

A. I thought you said a member of the Communist Party.

Mr. Preston: I deliberately did not. The first question we discussed at length is, "Are you a Communist?"

A. I will say no, definitely no. The only thing I would describe myself very simply as one who has read a lot, studied a lot, because as a teacher of history and political education in the Army I believe strongly in the fundamental concepts of our democratic system.

Mr. Preston: Your answer that you gave was directed to the question, "Are you a member of the Communist Party?

A. Yes, and solely to that. If you want a categorical answer to "Are you a communist?" the answer is no.

[fol. 60] Mr. Preston: You gave us that.

Mr. Sterling: That is your answer.

A. By the Witness: No.

Mr. Black: Would you care to state whether you have ever been a Communist?

A. Do you mean by that as he is making the distinction philosophically or a member of the Communist Party?

Mr. Black: I mean in the same sense you have just answered that you are not now a Communist.

A. I would say my thinking has only been what I described a moment ago as being based on the elementary concepts of the American democracy, assuming that you mean do I think like a Communist; that is assuming we

have some common understanding what you mean by that term.

Mr. Sterling: We are not talking now about a membership in any party.

A. Yes, philosophical views. You asked me to bring this material from the Army newspapers, I think.

Mr. Preston: Yes.

A. I think surely the material published under Army supervision and approved would indicate my thinking as much as anything else, and to bear out the point I made much of the material or thinking represented in these columns with very much the same or a continuation of the [fol. 61] thinking I showed in the Army. I would like to bring that in and show it to you.

Mr. Preston: We would be happy to have anything you would care to bring in.

A. When would you like to have it?

Mr. Preston: As soon as you wish to bring it in. Could you bring it in Monday, would that be convenient?

A. Oh sure. I don't recall whether I have a complete file. I think I have most of this Army material.

Mr. Preston: Fine, and if you have any of the California Jewish Voice.

A. No, I know I didn't keep any of that stuff.

Mr. Preston: Can you obtain those?

A. I suppose if I went to the publisher. He would have to go back to his files. I don't know whether he would want to do that. I am sure it would be available to the Committee.

. . . A ten minute recess was then taken. . .

. . . Mr. Konigsberg remained in the hearing room while the following witness testified. . .

[fol. 62] ALICE KING BENNETT,

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Preston:

Q. Please state your full name for the record.

A. My name is Alice King Bennett.

Q. Mrs. Bennett, my name is Arthur Preston. Mrs. Bennett, earlier in this matter we referred to a newspaper article in the Los Angeles Times dated May 23, 1952 which purported to quote you as identifying certain persons apparently in this general area as having been members of the Communist Party. Do you recall ever knowing a person by the name of Raphael Konigsberg?

A. Yes, I do.

Q. Where did you know Mr. Konigsberg?

A. As a member of the small unit in the Communist Party.

Q. Where?

A. In Los Angeles.

Q. When?

A. About 1940. Pardon me, 41 I think it was.

Q. Were you a member of the Party at that time?

A. Yes, I was.

Q. Did you ever see him at Communist Party meetings?

[fol. 63] A. At the meetings of this unit.

Mr. Sterling: What was the unit called, do you recall?

A. I don't know as it had a name. I don't recall the number that it was assigned. It was a very small unit, not more that six or seven people in it, professional people of various kinds who were difficult to assign to other units by virtue of their professional status.

Mr. Sterling: Were these meetings held in a private home or an office?

A. No, they were held in private homes.

Mr. Sterling: And they were never attended by more that six or seven people?

A. Not that I recollect now.

Mr. Sterling: Was your name then Bennett?

A. No, my name was then Judson.

Mr. Sterling: Your whole name?

A. Alice King Judson.

Mr. Sterling: Your husband was named?

A. Charles W. Judson.

Mr. Sterling: And Mr. Judson was employed on the Daily News as a reporter?

A. No, he was the Managing Editor at that time.

Q. By Mr. Preston: Were any of these meetings ever held at your home, Mrs. Bennett?

A. Of that particular unit I don't believe so, although [fol. 64] frankly my memory would not be trustworthy on that point.

Q. Do you recognize anyone in this room as being the person you have referred to as Raphael Konigsberg?

A. This gentleman (Indicating Mr. Konigsberg) is Raphael Konigsberg on my right.

Q. Are you certain of that?

A. There is no one else here who is the least bit familiar to me in appearance except this gentleman.

Mr. Preston: I have no other questions.

Mr. Sterling: Did you see Mr. Konigsberg on more that one such occasion?

A. Yes, I did see him more than once.

Mr. Sterling: At one of these meetings?

A. Yes, I saw him only at the meetings. I didn't know him otherwise. The meetings didn't countinue for more than three or four months, I don't believe.

Mr. Sterling: How often did they occur during the three or four months approximately?

A. It might have been every two weeks or it might have been once a week; I have forgotten.

Mr. Sterling: Do you have any questions?

Mr. Wright: No.

Mr. Black: What was the duration of each meeting, approximately?

A. By the Witness: Three hours.

[fol. 65] Mr. Black: You mean in the evenings?

A. Yes.

Mr. Black: And in Los Angeles?

A. Yes. Well I don't believe the meetings were necessarily in the City of Los Angeles. I can recall one or two occasions when they were in other towns nearby.

Mr. Black: Did the members of the group have any evidence of identification with the party?

A. No.

Mr. Black: So your testimony is based merely on the presence of Mr. Konigsberg at these meetings?

A. Yes.

Mr. Black: Do you recall whether he actively participated in the discussions held at the meetings?

A. I believe he did to the same extent as we all did.

Mr. Black: Did this group disband at some period to your knowledge?

A. My memory is not at all clear. I don't recall whether the group disbanded first or whether my husband and I dropped active contact with it before it disbanded.

Mr. Black: And can you place approximately the date of the last meeting which you attended?

A. Very approximately I would say that it was quite early in 1942.

Mr. Black: I have no further questions.

[fol. 66] Mr. Preston: I want the record to show that Mrs. Bennett came here under Subpoena issued by the Committee.

Q. By Mr. Preston: Is that correct, Mrs. Bennett?

A. By the Witness: Yes, it is.

Mr. Sterling: And I think we should also state for the record that before we asked Mrs. Bennett to testify here today we told Mr. Konigsberg that she was going to testify, and he requested that he be represented by counsel; that request was granted; that Mr. Preston then asked Mr. Konigsberg if he had any objection to Mrs. Bennett testifying today without Mr. Konigsberg's counsel being present so long as the hearing could be continued and Mr. Konigsberg through his counsel would have an opportunity to examine the transcript and to cross examine Mrs. Bennett at a later hearing.

The Witness: I will be cross examined at a later hearing?

Mr. Sterling: Yes, Mr. Konigsberg has requested the privilege of having his counsel represent him in this hear-

ing, and he is entitled to that, and that request has been granted, and his counsel would have a right to examine Mr. Konigsberg further and he would have a right to cross examine you.

The Witness: Where would such a cross examination be held?

[fol. 67] Mr. Sterling: We haven't arranged it. It presumably would be some afternoon next week.

Mr. Preston: Here.

Mr. Wright: Mrs. Bennett, this group of which you speak, how was it known, as a parlance of the party?

A. By the Witness: Well it wasn't known in any particular way. It was something of an underground unit inasmuch as the members were not known as Communists in any way, and the reason for being in this unit was to preserve their non-identity as a Communist.

Mr. Sterling: What was the purpose of the meetings?

A. To discuss current events according to communist interpretation and to discuss whatever methods or plans the individual members could to further the communist policy at the time.

Mr. Wright: I have one more, if I may. How was the group gotten together?

A. Well, you mean how were the members—

Mr. Wright: Selected, and how did they come in contact initially with each other?

Well the assignment of the members was done by higher-ups who made such assignments to units. I couldn't tell you very much about that, but we were simply assigned by the Membership Director, I suppose, to that unit.

[fol. 68] Mr. Wright: How were you notified of the meetings?

A. Usually by telephone.

Mr. Wright: By whom?

A. Well, I really can't recall at this time. We were either notified by telephone or else at the ending of the meeting we were told where and when the next meeting would be.

Mr. Wright: That is all.

Mr. Sterling: Are there any further questions?

Mr. Preston: No.

Mr. Black: No.

(Off-the-record discussion.)

Mr. Sterling: We will go back on the record, and we will continue this hearing to next Thursday afternoon at 3:00 P.M. We will stand adjourned. Thank you for coming in, Mrs. Bennett.

"End of Session"

[fols. 69-70] Reporters Certificate to foregoing transcript omitted in printing

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[fol. 71] THE STATE BAR OF CALIFORNIA

COMMITTEE OF BAR EXAMINERS

SOUTHERN SUBCOMMITTEE

LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG
In the Matter of the Application of RAPHAEL KONIGSBERG,
Application for Permission to Take Bar Examination

(No. 1194)

HEARING OF DECEMBER 9, 1953

APPEARANCES:

Graham L. Sterling, Jr., Chairman of Committee
Harold A. Black, Member of Committee
Arthur E. Freston, Member of Committee
Leroy A. Wright, II, Member of Committee
Alma Stayton, Assistant Secretary
Raphael Konigsberg, Applicant
Edward Mosk, Applicant's Counsel
Marion Farrell, Reporter

MR. RAPHAEL KONIGSBERG was then sworn in.

Mr. Graham L. Sterling, Jr.: My recollection is that at least one of the purposes of the continuance of this matter was to give Mr. Konigsberg an opportunity to be represented by counsel, and to cross examine Mrs. Bennett.

Mr. Edward Mosk: That is my understanding, sir.

Mr. Sterling: Do you wish to make any statement [fol. 72] before we have Mrs. Bennett come in?

Mr. Mosk: Well, may I say, may I know the names of the members?

Mr. Sterling: Arthur Freston, Leroy Wright of San Diego, Harold Black of Los Angeles on my left, and I am Graham Sterling.

Mr. Mosk: I think I talked to all of you on the phone, but I don't always know a face. I would just like to say this very briefly that Mr. Konigsberg, of course, consulted with me immediately after the last hearing, and I have examined the transcript of the last hearing and would like to have the opportunity for a fairly brief but some cross examination of Mrs. Bennett. We should also like the opportunity to present some additional testimony with relation to the matters that are referred to in the transcript, and then at the conclusion of that we would like the opportunity to present certain character witnesses or discuss the matter of presentation of affirmative evidence of good character. I think perhaps at the conclusion might be a wiser time to discuss that matter than now. That is the only thing I would have to say at this time.

Mr. Sterling: All right, Mr. Mosk, you want to have Mrs. Bennett come in.

Mr. Mosk: I presume that we will follow general rules of evidence in examination even though—

[fol. 73] Mr. Sterling: We are very informal, Mr. Mosk, and our rules say we don't have to pay much attention—

Mr. Mosk: I am afraid I don't know any other way of questioning, however.

Mr. Harold A. Black: You won't be penalized for following the rules of evidence.

Mrs. Alice K. Bennett then resumed the witness chair.

Mr. Sterling: Mrs. Bennett, as we all recollect, testified at the last session of this matter and we continued it to give an opportunity to Mr. Konigsberg to be represented by counsel—and this is Mr. Mosk, Mrs. Bennett, Mr. Konigsberg's attorney—and to give Mr. Konigsberg's attorney an opportunity to ask you some questions on cross examination. So, Mr. Mosk, you may proceed.

ALICE K. BENNETT, having been previously sworn, testified as follows:

Cross-examination.

By Mr. Mosk:

Q. Mrs. Bennett, I want to direct your attention to certain matters to which you testified at a prior hearing. Of course all I seek to do by these questions is to secure your best recollection on matters to which you have testified. I am sure you realize the seriousness of this matter to [fol. 74] Mr. Konigsberg, and therefore the reason why it is necessary for me to examine you in this manner. Mrs. Bennett, you had prior to the hearing on September 25 before this Committee had testified previously with regard to some of the matters of your membership in the Communist Party, is that correct?

A. In other connections.

Q. And do you remember when it was that you did so testify, approximately?

A. Let's see, it was May, 1952.

Q. And was that the first time that you had testified with regard to these matters?

A. No.

Q. When prior to that time had you testified with regard to these matters?

A. Well, it was the first time I testified.

Q. Had you disclosed the information that you discussed on May 22—That was before the Committee on Un-American Activities, was it not?

A. Yes.

Q. Now, prior to that time you had discussed the same matters with some other committee or group?

A. In general the same matters, not in complete detail.

Q. And who or what was the that group or individual with whom you discussed it?

[fol. 75] A. The Immigration Bureau.

Q. And approximately when was that?

A. I believe that was June, '51, or it might have been later. It might have been September. It was in '51 sometime.

Q. You are sure it was in 1951?

A. Yes, that is right.

Q. Now, that was the first time that you had discussed any of these matters, is that correct?

A. Yes.

Q. Now, Mrs. Bennett, you were formerly married to a Mr. Judson, is that correct?

A. Yes.

Q. And you are now married to a Mr. Bennett?

A. Yes.

Q. Is Mr. Bennett a citizen of the United States?

A. Yes, he is.

Q. Has he had any problems with the Immigration Department?

A. No.

Q. Under what circumstances was it that you first had the conversations with the Immigration Department?

A. They sought me out.

Q. And do you remember who it was that sought you out at that time?

A. Frankly I don't think I could tell you his name now. [fol. 76] I don't remember it.

Q. And was that with regard to any particular individual?

A. No.

Q. They sought you out to inquire just generally, it that it?

A. Yes.

Q. Did you at that time mention Mr. Konigsberg's name?

A. I don't believe so, although I would have to see, I would have to see the information I gave before I can state definitely.

Q. Do you have a transcript of the information that you gave at that time?

A. No, I don't.

Q. Do you know anyone who does have a transcript of that?

A. No.

Q. But you do not believe you mentioned his name at that time?

A. To my best recollection I would say no.

Q. All right now, subsequent to that first hearing before the Immigration Bureau did you have any other hearings before any bodies other than the one on May 22, 1952 before the House Un-American Activities Committee?

[fol. 77] A. No.

Q. So that the three examinations are the only ones you have had? You have told us all?

A. Yes.

Q. Now, I believe you testified, Mrs. Bennett, that you were married to a Mr. Judson, and that he also was a member of the Communist Party at that time?

A. That is right.

Q. Now, when was it that you first became a member of the Communist Party?

A. It was either 1935 or 1936.

Q. And you remained until what date?

A. There wasn't any specific date I could give. It would be in the first half of 1942.

Q. Now, the first group that you were a member of was composed of what type of people?

A. Social workers.

Q. And this was exclusively social workers?

A. Yes.

Q. And you did testify, did you not, that to the best of your knowledge all of the social workers were in special groups for social workers?

A. Yes.

Q. Now, was Mr. Konigsberg ever present at any of those meetings?

A. No.

[fol. 78] Q. Now, during the period of 1940 and 1941 what was your business or occupation?

A. I was a housewife.

Q. And did you have any other activities or belong to any other organizations other than your testimony that you were a member of the Communist Party?

A. I belonged to the Women's Auxiliary of the Newspaper Guild.

Q. Your husband was active in the Newspaper Guild, was he not?

A. Yes.

Q. And that is Mr. Judson?

A. That is right.

Q. And the Newspaper Guild was an active organization at this time, was it not?

A. Yes.

Q. Had frequent meetings?

A. Yes.

Q. And you and your husband attended those meetings, did you not?

A. Not too regularly.

Q. But you did go from time to time to those meetings?

A. Yes.

Q. And these were open and regular meetings of the trade union, were they not?

[fol. 79] A. Yes. I wouldn't say I attended more than two or three open full meetings of the Newspaper Guild, however.

(The reporter then read the last answer.)

Q. Now you say open full meetings, were there smaller committee meetings and other functions of the Guild?

A. I believe there were committee meetings.

Q. And did you attend any of those?

A. Not that I recall.

Q. Were any of those held at your house?

A. Not that I recall. There may have been. My husband served on one committee for a year or so. I don't recall if there were any meetings of that committee at our house or not.

Q. And during this time you with your husband attended various social affairs of the Newspaper Guild and other organizations, did you not?

A. Yes.

Q. And in the course of those affairs you met numerous people that you had seen at the Guild meetings and at other places, did you not?

A. Yes.

Q. Now, you have testified that you met or saw Mr. Konigsberg at certain meetings of the Communist Party.

A. Yes.

[fol. 80] How many times did you see Mr. Konigsberg?

A. Well, it would be very hard to estimate the number

of meetings. We were members of the same unit for less than a year, in fact I don't think it was more than six months, and I can't recollect now whether the meetings were once a week or once every two weeks, but with the exception of a few meetings that we may have missed, which I don't have a recollection of, we saw each other at the meetings.

Q. And was your husband present at those meetings also?

A. Yes.

Q. And your husband has also testified before the House Un-American Activities Committee?

A. Yes.

Q. Do you know whether he mentioned the presence of Mr. Konigsberg at any of those meetings?

A. No, I don't.

Q. As a matter of fact you know that he did not?

A. No, I don't know that.

Q. You don't know one way or the other?

A. That is right.

Mr. Sterling: You are speaking of Mr. Judson?

Mr. Mosk: That is correct.

Q. By Mr. Mosk: But he was present at the same meet- [fol. 81] ings that you were and would have the same knowledge as to who was present at those meetings.

A. By the Witness: Yes, he would.

Q. Now, do you know what business or profession Mr. Konigsberg was following at the time that you alleged to have seem him at certain meetings?

A. Yes.

Q. And what was that?

A. Social worker.

Q. And you knew this by reason of your knowledge and association with him at that time?

A. No, only that we were told he was a social worker.

Q. "We were told"?

A. That is right.

Q. And who told you?

A. I couldn't tell you. I don't know.

Q. Now, do you know whether or not he was a member

of the or worked for the State Relief Administration during this period of time?

A. No, it was my understanding he was connected in an executive capacity with one of the Jewish agencies. I don't recollect which one.

Q. Do you know whether during any part of this time the person whom you alleged to have been Mr. Konigsberg was ever employed by the State Relief Administration?

[fol. 82] A. I know nothing about his employment.

Q. Well now, you do remember testifying, do you not, Mrs. Bennett, before the House Un-American Activities Committee?

A. Yes.

Q. I will show you a transcript on Page 3,565 of "Communist Activities Among Professional Groups in Los Angeles Area, Part II, Hearing before the Committee on House Un-American Activities", and I will ask you whether or not these questions—you may read this to yourself—were asked by Mr. Tavenner who was questioning you, and whether you gave the answers as they appear here. I will ask you to start reading with the question:

"Mr. Tavenner: Were you acquainted with Mr. Raphael Konigsberg?"

(Witness reading transcript)

Q. By Mr. Mosk: May I have that. (Witness returning transcript) Were you asked these questions, and did you give these answers at that time, Mrs. Bennett?

A. By the Witness: Based on the fact that—

Q. Just a moment. I will read the questions:

"Mr. Tavenner: Were you acquainted with Raphael Konigsberg?

"Mrs. Bennett: Yes, he was a member of this unit.

"Mr. Tavenner: How was he employed at that time?

[fol. 83] "Mrs. Bennett: To my recollection he was employed in an executive capacity with a Jewish agency. I am not very sure of that, however.

"Mr. Tavenner: Do you know whether he had at any time been the head of the California State Relief Administration or held any official position in that organization?

"Mrs. Bennett: I am quite certain that he had not held any such post as that during the years that I was a member of the Party."

Did you give those answers?

A. I couldn't tell you.

Q. Well is that statement true?

A. I don't know.

Q. So that you have no information actually as to whether or not he ever had been a member of the State Relief Administration?

A. No.

Q. It is true, is it not, Mrs. Bennett, the person to whom you were referring had never been a member of the State Relief Administration?

A. I don't know.

Q. And you have no knowledge now as to whether you testified this way at the time of this hearing or not?

A. No.

[fol. 84] Q. Do you deny having made such a statement at the hearing?

A. No.

Q. Now, this group that you alleged that Mr. Konigsberg was a member of, approximately when was it that you first alleged that you met him with relation to such group?

A. I believe it was the late summer or early Fall of 1941; my best recollection.

Q. Now, you are quite sure that he was acting as a social worker at that time?

A. I wouldn't want to swear to that.

Q. But that was your understanding certainly?

A. That is right.

Q. I will call your attention now to Page 3,560 of the same transcript of the hearing before the House Un-American Activities Committee on May 22, 1952 to which I referred before, and I will ask you whether or not you made the statement which appears in the next to the last paragraph on that page. You read that to yourself first, and I will read it into the transcript.

(Witness reading transcript) (Witness returning transcript)

Q. By Mr. Mosk: Now did you make the statement at that time, Mrs. Bennett:

"That is correct in a way. Actually I presume that any social worker who was a Communist would have been [fol. 85] assigned to social workers units as a mentioned earlier, because it was considered necessary they be in protected units."

Did you make such a statement at that time?

A. By the Witness: I presume so.

Q. Was that statement true?

A. Within the limitations of my situation.

Q. So far as you knew that statement was true to the best of your knowledge?

A. Well it was true in so far as social workers of no particular rank or importance were concerned.

Q. Now, you have indicated that you were at certain meetings at which Mr. Konigsberg was also present, is that correct?

A. Yes.

Q. Now, do you recall anything that Mr. Konigsberg did or the person you alleged to have been Mr. Konigsberg said at any of these meetings?

A. No.

Q. You have no present recollection of any of his participation?

A. No.

Q. Was anything said by any person present at any of these meetings advocating the overthrow of the government by force and violence?

A. I couldn't recollect any specific statements now by [fol. 86] anybody, including myself.

Q. All right, do you recall any statements, to use a word, general term that was said by anyone that was present at any of these meetings, whether Mr. Konigsberg or anyone else?

A. It wasn't necessary that the statements be made. It was implicit in the fact that one was a Communist that one accepted the fact of a forceful overthrow of the government sometime.

Q. Now, I am asking you, Mrs. Bennett, what was said

at any time by the person you alleged to have been Mr. Konigsberg.

A. I don't recollect anything he said at all or anybody else said.

Q. You have no recollection of anything said at any of the meetings you allege that he was present at?

A. No.

Q. Now, have you ever seen Mr. Konigsberg anywhere other than at the meetings that you have alleged that he was present at?

A. Not to my best recollection. I wasn't on personal terms with Mr. Konigsberg. If I saw him at parties I don't recollect it now, but it is quite possible I did.

Q. So it is possible that you saw him at other places also?

[fol. 87] It is possible.

Q. Now, as a matter of fact, Mrs. Bennett, when you came into the room at the time of the hearing on September 25 you didn't really recognize the person whom you identified as being Mr. Konigsberg, isn't that correct?

A. No.

Q. Isn't it true the only reason you identified him as Mr. Konigsberg was because he was the only person present in the room whom you had ever seen before?

A. That is right.

Mr. Mosk: I have no further questions, Mr. Chairman.

Mr. Freston: I have no questions.

The Witness: I would like to make an additional statement.

Mr. Sterling: Surely.

The Witness: In regard to social workers being in closed units, it is true that they were, but if there were social work personnel at quite a high executive level—I couldn't tell you just where that would begin—they might not have been in the group with other social workers.

Mr. Black: I have no further questions.

Mr. Wright: I have no questions.

Mr. Freston: Mr. Chairman, may I ask Mrs. Bennett a question that has no reference to the cross examination?

[fol. 88] Mr. Sterling: Yes.

Mr. Freston: Mrs. Bennett, do you know a Mrs. Bass

who has been identified as, I believe, the Editor of the California Eagle?

A. By the Witness: I have never met her. I have heard the name. I don't recollect having met her, let's put it that way.

Mr. Freston: I have no further questions.

Mr. Sterling: For my own edification, Mrs. Bennett, I would like to clarify doubts in my mind that were left by the last questions and answers. Do I understand that you do or do not identify the gentleman who is sitting across the table, and who has been represented to you by us as being Raphael Konigsberg as the man who was by that name present at these meetings that you have testified to?

A. By The Witness: That is true, yes.

Mr. Sterling: You do identify his as such?

A. Yes.

Mr. Sterling: I have no further questions.

Mr. Mosk: I have no further questions, Mr. Chairman.

Mr. Sterling: Thank you, Mrs. Bennett, very much for coming in. We appreciate it. I am sorry to have kept you waiting.

(Mrs. Bennett then left the hearing room.)

[fol. 89] Mr. Mosk: So far as the other matters that we wanted to place on the record, Mr. Chairman, we can proceed in one of two manners. Either I can direct rather general questions, actually it is Mr. Konigsberg's testimony, and he can perhaps just make his statement, and if I feel that there are things that I want to direct his attention to perhaps I can break in if that is satisfactory.

Mr. Sterling: That will be entirely satisfactory. You may proceed, Mr. Konigsberg.

(Mr. Konigsberg then resumed the witness chair.)

Raphael Konigsberg, having been previously sworn, testified as follows:

The Witness: I appreciate very much the interest that the Committee displayed in the main point that I was trying to make the last time as illustrated by Mr. Freston's

permission for me to bring in that Army material, and I hope you had a chance to review it. Otherwise I will refer to it briefly.

The point I wanted to make, and I think it is very much in keeping with the discharge of the function of this Committee, and my answer to it is that, for example, these columns that I wrote for the California Eagle or the organizational activity or public speaking that I was engaged in since I have returned from the war to which reference has been made, all of this is simply my discharge of what I said at that time was my sense of responsibility as a citizen, and I made the point that this I was very closely [fol. 90] indoctrinated with in the Army, and so I would like to introduce with a few words a statement from General Eisenhower which I just happened, since I have been at the meeting, to see in the book of his, from the official Army publication which gave me my orders—

Mr. Mosk: If I may interrupt. May we introduce this as Mr. Konigsberg's exhibit?

The Witness: "Crusade In Europe", a paper bound copy, Page 76 to 78. I will just read two sentences from it, not the whole pages. You will all recall that I mentioned that we felt at that time under General Marshall that the soldier had to be told why he was fighting in order to make him a better soldier. I am quoting now from Page 76 of President Eisenhower's book: "An early deficiency in our war-time Army involved a dismaying lack of comprehension on the part of our soldiers as to fundamental causes of the war. Differences between democracy and totalitarianism were matters of academic rather than personal interest. Soldiers saw no apparent reason why conflict between the two was of any concern to America. No matter what clash of opinion had existed on the point before the war began, a clear, simple and commonly held understanding was now essential among our troops."

And then without reading in detail he explains why the recommendations led up to the establishment of the [fol. 91] orientation program.

Now, "War Department Technical Manual, TM 28-210" I want to refer to, dated July, 1945. These Manuals, I should make clear, and the Mobilization Regulations, were

the official orders which bound us to discharge our responsibilities. I want to refer briefly to Page 22 of this Manual, which incidentially is issued over the signature of General Marshall as Chief of Staff. General Marshall states that one of the things we must indoctrinate the soldier with is "the belief of Jefferson and of Lincoln in the soundness of the majority opinion of the common man when properly informed.

The next quotation I want to make is from the Mobilization Regulations, No. 1-10, again over the signature of General Marshall in which he points out that: "The objects of the off-duty education program are . . . . to improve the value of Army personnel as citizens upon return to civil life."

And just one other reference and I will be through. Now, this is the official "Army Talk Orientation Fact Sheet" No. 51, entitled "What This Orientation Deal is All About". If I may interject these sheets were distributed, they were broadcast throughout the Army, and thousands of men got them, and this particular sheet tells what the major objectives of this educational program were, and No. 6 declared that we must build faith in America, and goes on to say: [fol. 92] "Our Army orientation does not attempt to impose on us a blind faith which closes our eyes to faults such as unemployment, poverty, race riots and other unsolved problems.

"Once Germany and Japan are licked, we'll come home to problems aggravated by the war. As citizens we must be prepared to participate in supporting plans for assuring world peace and returning America to peacetime prosperity."

Now, I submit, gentlemen, that these, which of course are very brief quotations from more extended instructions and orders from the War Department is what was the basis for the work I was doing in the Army and I think shows very clearly and proved by reference to these columns that Mr. Freston showed me the last time is in effect what I was doing as a civilian, and while these references don't spell it out in detail, we were told specifically that our job was to teach the soldier that when he came home as a

civilian he would have to perform the same functions in the safeguarding of democratic principles as a civilian as he did as a soldier, using ballots instead of bullets as the analogy was used at the time.

And I would like to now just comment on several of these columns that were referred to by Mr. Freston. I have here clippings that I kept during the period that I was [fol. 93] working with Mrs. Bass, and I think I can say now that the photostats that you showed me apparently are accurate copies. I couldn't then because I didn't know. I didn't come prepared with any of this material, but I have here all the columns that I wrote for Mrs. Bass' paper. There were exactly fifty of them, and I would like to ask the question which can be answered later, of course, the significance of the selection of these twenty-one columns that I was confronted with, because I don't quite see the rhyme or reason for them. I could see a selection based on some haphazard sampling, but it is interesting that these are right in the middle of this period of fifty, all consecutive except for one which is omitted out of the consecutive order, and then of the fourteen columns before the first one submitted to me there are some interesting columns that could have been introduced too bearing on the point which this Committee is interested in, and in the fifteen columns after these twenty-one.

As an illustration I will just refer to them briefly, and the Committee, of course, will go into them later at its pleasure. The column that I am interested in asking why it was omitted, because it is right in the middle of these twenty-one, it couldn't have been by accident because the twenty-two are all consecutive, and this one was omitted; the twenty-one columns dating from July 28, 1950 to December 28, 1950, and the column that I want to ask [fol. 94] about is dated August 18, 1950.

Mr. Mosk: I am sure you have a right to ask the Committee questions. You might just refer to the column and indicate what your observations were with relation to that column.

The Witness: I am trying to simply say that this raises a question in my mind as to why this was omitted, because I don't question the Committee's rights like anything they

want to ask me about, but since the others were all consecutive I would like to know why this one was omitted. I think it has significance because it bears on the issues particularly with respect to the points involved in the Grunsky Act.

This particular column I called "THE ANNIVERSARY" and it was simply some comments on the anniversary of the end of World War II, and in this column I quote from some of these other orientation fact sheets where the War Department gave us definitions of Fascism, which is a concept I frequently referred to in these twenty-one columns, which is why I am raising the point now, and reference to the column will show that the concept as I describe it in these columns is almost word for word that used by the War Department in its educational program with the soldiers. Now, the—

Mr. Sterling: How is it stated?

The Witness: I would be glad to read it.

[fol. 95] Mr. Sterling: Not the whole thing.

The Witness: Just one sentence: "Fascism is the precise opposite of democracy. Fascism is government by the few and for the few. Fascism came to power in Germany, Italy and Japan supported in secret by powerful financial and military interests." Then I will skip a few lines. "Any Fascist attempt to gain power in America would work under the guise of super-patriotism and super-Americanism. Indiscriminate pinning of the label 'Red' on people and proposals which one opposes is a favorite trick of native as well as foreign Fascists." That is a direct quote from the Army.

Mr. Sterling: That is all a quote from the Army?

The Witness: Yes, I have it here in italics.

Mr. Sterling: From the Orientation Facts?

The Witness: That is right. Now, the other two columns. Of course it would be any of the other twenty-five or twenty-six that we could refer to, but since it was my understanding, and I think it is correct that one of the things that the Committee is interested in learning is whether any applicant has ever advocated overthrow of the government by force and violence. It just happens two columns of the fifty that deal specifically with that point, the one I entitled "Force and Violence" on May 22, 1950, and——

[fol. 96] Mr. Mosk: This is one column that was not in the group that the Committee had last time?

The Witness: That is right. That is why I am simply asking of this is what the Committee was interested in learning I think that is a column I could have been questioned about, in which I certainly criticized very severely the whole notion of force and violence or its use. The reverse of that is in the column of February 2, 1951, which is called "Time for Courage" in which I lay out an action program for citizens. I have been talking in the previous columns about what some of the problems were, and in the last column, because I think one should do more than theorize. I laid out an action program for what a citizen can do about it, such as reference to it will show this is what I was recommending: "Talking to your neighbors; writing letters to the President; writing letters to your Congressmen; organizing committees, making a contribution, if necessary . . . . ." and so on. My point is this gentlemen: If I was advocating force and violence it would be in such a column or in such a program.

I think without belaboring the point any further there is simply not a word in any of the twenty-one or the fifty columns. I will be glad to submit all fifty for inspection. In any of the statements that were previously referred to by Mr. Freston, such as this statement to Mr. Tenny's Committee, or any records there may be in the newspapers [fol. 97] or any speeches that I may have made at no instance have I ever suggested that concept, and I will state categorically—I did it last time—at no time have I urged it, believed it, or would I do so.

Mr. Mosk: You had another column that was written while you were in the Army and then was reprinted elsewhere, which is somewhat of a declaration of your principles, is that correct?

The Witness: Yes, I was just going to refer to that briefly next. You see I think you have me at an advantage here, and I am glad of that. I am on record as to what I have thought and have said. Many persons that you could call in for investigation you would have no idea what he thought because he never said anything of which too many people have never done anything in discharging their citizenship responsibilities, but I have for many years put

myself on record. If I were a person engaged in conspiracy that would be the last thing I would be doing, publicly putting myself on record.

And here I have a brief statement that was written originally for the Army Orientation Program. We were given an assignment at the Army Staff School at Washington and Lee University—I referred to it at the last time—to write "Why Are You in This Fight", a personal statement of your beliefs. Now I just happened to send a copy to my wife, and she sent it to this magazine. I didn't personally [fol. 98] send it. I would like to submit this. Though written ten years ago it is a statement that I can subscribe to at this moment as a statement of what I believe in. May I just quote from it?

"Every person in uniform asks himself at some time: Why am I in this fight? What is my stake as an individual in this total war? And sooner or later each one of us must give himself an answer.

"It is not enough to say: 'Hell, I was drafted,' or even, 'I enlisted.' While it may be that the soldier who enlisted has a clearer, more positive reason for being in the Army, nevertheless the draftee can also find deeply personal and satisfying reasons for being in uniform—if he understands that in a democracy it is the people (of whom he is one) who draft themselves to serve their country in its hour of peril.

"In answering this question for myself I find that the simplest, most accurate reply is: I am in the army because I am selfish.

"I want and need certain things which I know I will never have unless the United Nations win this war; things which I know I could never enjoy unless I did my share in securing them for my side.

"I want economic security for my family and myself. A minimum of economic security is the basis of everything else: hungry, desperate men cannot be good parents, good [fol. 99] neighbors or good citizens; they cannot enjoy life or contribute to it.

"I want also to feel free to follow certain professional and cultural interests. I know that if Fascism wins, all this will be impossible. So I must help defeat Fascism. I know I cannot do this alone.

"I want to live like a man, not like a slave; to live in dignity while striving for the realization of the promises of manhood and civilization. I cannot expect others to fight and die for this liberty and hand it to me.

"I want the United States of America to be a mighty democratic nation. Only such a land can guarantee to me and mine the things we hold indispensable to a useful, honorable life. I am a Jew.

"I know that democracy can be lost, and how it can be lost. I have learned that if Fascism comes here I myself will be to blame—if I have not done everything in my power to prevent it. If I do the best I can now, I will not have to reproach myself later, win or lose. I feel personally responsible for my country's fate. I want to help shape America's future."

Now, there are several other paragraphs. I think that is sufficient to indicate what I mean.

And in concluding this part of the presentation I would like to just make reference to an editorial in the American [fol. 100] Bar Association Journal of December, 1952, Page 1028: "Constitutions don't uphold and defend themselves. An essential for constitutional rights is a staunch people who revere freedom and whose watch over the ramparts is ceaseless."

I think the gentlemen of this Committee will appreciate the very simple point I am trying to make, that all these activities which I admit to, which I am proud of, are activities I carried on in discharging what I considered to be my citizenship responsibilities. You may disagree. You may feel citizens should carry out their duties otherwise. I challenge anyone to point to anything I said or have done that suggests my moral unfitness.

I can't help but refer to a statement made by William Howard Taft which I came across. I hope the Committee doesn't think I spent weeks of research. I came across the statement in his book "Ethics in Service". He refers to the legal profession. The title of the book is "Ethics in Service", Page 13: "The legal profession had its beginnings in the struggle for individual rights. Most of the progress toward individual liberty in English history was made through the successful struggle of the lawyers against the assertion of the divine rights of kings and through the de-

fensive privilege of members of our profession. Fidelity to his oath requires that the lawyer be a genuine force against oppression and that he strive valiantly to make the law an [fol. 101] instrument of right and justice, his skill and devotion on behalf of the individual profound as it affects the welfare of society."

Now perhaps I will be immodest and suggest it, but here again you have me at an advantage. I think my record shows I could be that kind of a lawyer, whereas in contract —this is no reflection on the other applicants since they are are so young, most of them, and they have not done anything, they have not had a chance to do anything—you couldn't begin to know, and from your experiences with them, at least my experience with them during my three years in law school, you wouldn't know how to determine how good a lawyer they would be. Here you have a chance to determine on the basis of a man's record of many years standing, and I submit that the record shows that because I have this, call it what you will, this streak of principle I would perform in the functions in the manners suggested by the outstanding members of the Bar.

Now, I haven't up to this point discussed in detail or even commented on the specific columns that were referred to by Mr. Freston. I think they bear comment if only to show this point, that during the same period I was making these comments in the columns in the California Eagle other American citizens were taking similar comments, other Justices, which say in effect what I say in these columns, [fol. 102] column by column, while in some of the instances sometimes they were not said until sometime later, some in recent months. I could be considered as saying them prematurely.

And so if the Committee wishes, and I think it would be worth-while unless my counsel thinks otherwise, we could refer to some of this material which simply bears out the point I was expressing, and I don't want to claim credit for any original ideas, but these ideas—apparently there is no other explanation—if they were brought in here they were brought in to show they bear on the question of my fitness and no doubt unfavorably in the opinion of the Committee. It can be demonstrated—the basic idea in each of the col-

umns—that statements very similar or the same have been made by responsible citizens throughout the community, throughout the country, whose principles are looked up to.

Mr. Mosk: What you have prepared, as I understand it, is that you have gone through the columns to which the Committee referred last time, and have shown with relation to these columns that other persons were either at that time or before or since have taken positions basically similar, and persons who are either in high positions in government today or are well respected in one manner or another. Now, I don't know what the Committee's wishes are. Mr. Konigs- [fol. 103] berg is prepared, I think, on all of the columns, or he can pick out a few by way of example, whichever way the Committee prefers that he be——

The Witness: I don't think it would be necessary to prove the point. It would take a lot of time to go through every single column. I selected eight out of the twenty-one most significant bearing on the general question of my fitness, which are the most significant out of the twenty-one, which make the point I was just making, to show that I was not a voice in the wilderness and no radical voice on the mountain top shouting these things.

For example, the Vice-President of Ford Motor Corporation; Ernest Weir, President of the International Steel Corporation; Justice Jackson of the Supreme Court; President Eisenhower today himself saying these things. Perhaps if Mr. Freston or the Committee could enlighten me what significance they attach to these views I could be better prepared to answer them. I assume obviously the only reason they were brought in here for was to bear on the question of proving my fitness. Frankly, gentlemen, if actions such as I have been engaged in renders a person unfit to be a lawyer, woebetide not only the legal profession but every other profession in our country. I hope the Committee is not suggesting that an active citizen cannot be a good lawyer. I am sure the Committee feels the other way [fol. 104] around, that the lawyers should be active citizens.

Mr. Sterling: Would it be possible, Mr. Konigsberg, for you to read into the record the citations of these quotations from prominent people that are to the same general effect as your editorials.

The Witness: If you would like me to do that.

Mr. Sterling: Not reading the entire text, so anyone reading the record could refer to them.

The Witness: Can I do this? Unless you insist, I can take all twenty-one, I think just these eight would answer the question. Of the eight I could read one brief one for each one rather than the half dozen I have for each. I think perhaps that would meet the problem.

Mr. Freston: Yes.

The Witness: I would take them in about the order they were in the presentation to me. This first column that the Committee presented to me was called "The Greater Loyalty "written 7/28/1950, in which I make the simple point that the loyalty of an American citizen should be tested by his loyalty to the basic principles of our Constitution and not his adherence to the current program of the present administration, whatever period of history that might be. Now, I don't think there can be too much argument of that point, and we find, for example, in this book, "The Loyalty of Free Men" written by Alien Barth, who is a prominent [fol. 105] newspaperman, Pages 3 to 7, I won't even read it, but I can refer you to it, in which he makes the very point——

Mr. Mosk: It is a regular Cardinal twenty-five cent publication sold on all newspaper stands.

The Witness: As a matter of fact I first read it at the Law School Library in a bound copy. The page number refers to the paper bound copy, and just the one——

Mr. Mosk: May I interrupt? I note the book has a foreward by Zachary Chaffe of Harvard Law School.

The Witness: The one quotation I want to offer in connection with it comes from the former Librarian of Congress, Archibald MacLeish in which he says: "Patriotism which measures itself not by its love of America but by cold passion against the Soviet Union is an evil thing that will disastrously divide the United States. A man who lives not by what he loves but by what he hates is a sick man, and so too for a nation." This man is now Professor at Harvard University, and this was spoken November, 1953, this last month, at the Annual Meeting of the B'nai B'rith Anti-Defamation League.

There are a lot more on that point. I won't give it to you now. On the next column which dealt with the subject,

"What is Wrong with Peace?", written August 25, 1950; and here I will simply refer to quotations without reading them, except one brief one.

[fol. 106] Twenty-one of Boston's leading bankers and industrialists called the Dover Group on December 1, 1950, which was just a little while after I wrote this, stated the same thing, that is they urged, and this was an official declaration of a group in Boston, they urged the withdrawal of United Nations troops in Korea, withdrawal of the U. S. Seventh Fleet from Formosa, and the seating of the Chinese delegation in the United Nations; and statements from Herbert Hoover and Joseph Kennedy in the Wall Street Journal urging the same program.

Mr. Sterling: What date?

The Witness: 12/27/50, December 27, 1950, and I think you are familiar with the very last statement that President Roosevelt made in the Jefferson Day address within the day before he died: "The work, my friends, is peace. More than an end of this war—an end to the beginning of all wars, yes, and an end forever to this impractical, unrealistic settlement of the differences between governments by the mass killing of peoples."

And as you can see there are quite a number of others which I won't take the Committee's time for. One you can refer to is the resolution by Edward Johnson of Colorado introduced into the Senate on May 23, 1951, for ending the war in Korea.

The third is a rather interesting one called, "We Are The Experts", in which I make the simple point that ordinary [fol. 107] citizens have got to take a responsible part in government and don't have to be like expert economists, because the basis of democracy is the mass judgement of people, and it is rather interesting that when General William F. Dean was released from thirty-eight months of Communist captivity in Korea, the first interview he gave, of which I have a copy here from the Los Angeles Examiner, which quotes a statement from the City of Washington, October 22, in which it states: "Major General William F. Dean declared today that United States' parents should do a better job of teaching their sons what it means to be an American. He asserted that G. I.'s captured by the Reds in Korea would have been better able to resist

Communist brain-washing if they received home training in the responsibilities of American citizenship. The General told a news conference that too often youths are inducted into the Armed Services with only a vague awareness of their duty to their country."

It is just the point I have been making all along. The next day President Eisenhower at his news conference, commenting on this as well as similar reports the President told his news conference, "Americans sometimes get only meager education in their obligations to a free form of government," which is, of course, the point I was making basically in all these columns. In other words, I should say the gap in my own small way I was trying to fill.

[fol. 108] This next one that Mr. Freston, I think, had enlarged, called, "The Gangsters, Incorporated," dated November 5, 1950, and this is from Justice Jackson of the Supreme Court of the United States, a statement made at the Nuremberg Trials November 21, 1945: "The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched." And again many others, but I won't refer to them.

The fifth one called "Truth Will Rise" written December 7, 1950, in which I make the point very simply that the program we were following, that is our country was following, overseas was not in the best interests of our country of the people overseas, and here is a statement that was in the Wall Street Journal 12/6/50. It warned that "The country faces national ruin if it doesn't recognize its foreign policy mistake." It called for "appeasing China" as the least disastrous of possible alternatives and for treating United States allies henceforth as true partners rather than bought followers, which incidentally is what Secretary Dulles just said the other day in contradicting Mr. McCarthy, that is the way they are going to treat their allies.

[fol. 109] Mr. Mosk: May I interrupt you a moment? You have now gone through five. Actually you have gone through all of them. I think that the point is probably made before the Committee that he would be able to go through each of the additional articles and establish that other per-

sons of various statures of life were saying the same things in similar or in some cases identical manner, and if the Committee wishes we can go on or can submit separately or if you have specific questions as to other columns, but I think that perhaps the point has been made for the record affirmatively on these matters. Were there any other specific matters in relation to this?

The Witness: No.

Mr. Mosk: Let me say this if I might: As I indicated at the beginning in discussing this matter with Mr. Konigsberg we felt that there were three phases of the matter that we wished to bring before the Committee. One was to complete such cross examination as has been completed with relation to the one witness. Secondly, to indicate as best it is possible without any formal pleadings, not knowing specifically what matters to respond to, Mr. Konigsberg has now, I think, indicated something of his general approach, and I should like at least to submit, I think, if you are making a record on this, at least the article here, I think, should be submitted as something of a statement of principles of [fol. 110] Mr. Konigsberg as an exhibit.

The Witness: That is the only copy I have.

Mr. Mosk: It can be withdrawn at a subsequent time.

Mr. Stefling: Do you wish to take it at this time and photostat it and put in the photostat?

The Witness: If you wish.

Mr. Mosk: The other phase of our approach to this matter is the matter of calling additional witnesses. Now, Mr. Konigsberg is in a peculiarly good position, as he had indicated, far better than I could possibly state, because of his age and because of his experience and his background, his work record, he is in a position to call upon persons who have had contact with him throughout his career to attest to his moral character. We can and are prepared to present that in one of two manners. I felt it would be an imposition perhaps to bring witnesses down today. I didn't know how long the Committee wished to take, but we have two methods, and we would submit to either method, but we do feel that we want to submit affirmative statements of persons in various walks of life, and we are prepared to bring anywhere from ten to twenty persons who have known Mr. Konigsberg in varying times in his career and have had a

chance to observe him under the stress of those things which he has actually done affirmatively and to attest to his [fol. 111] character. Now, we can either bring five, ten, probably twenty witnesses that would be willing to come down, and these would all be persons of stature that would be recognized, we feel, by this Committee, or if the Committee prefers we can get such statements in writing and submit them, and we bow to whichever method the Committee prefers to take this testimony, but we feel that it is most relevant, and in this case we have the forunate circumstances that we have a man with a work and a community existence of such length of time that no new admittee to the Bar would ordinarily be able to present, and we feel that this is significant and must be considered by the Committee.

Mr. Sterling: Mr. Mosk, it occurs to me that the objective that you seek can be accomplished perhaps without taking an undue amount of your time or Mr. Konigsberg's time or the time of the Committee by our allowing Mr. Konigsberg to have people file with this record letters in which they express their opinions.

Mr. Mosk: We have no objection. Time is also a problem with me, of course. We have no objection. We would like to have a reasonable time in which to do that.

Mr. Sterling: You may do that and have any reasonable time. Is thirty days sufficient?

Mr. Mosk: That is quite sufficient.

Mr. Sterling: Perhaps I am overly direct in my approach [fol. 112] to this matter, and perhaps I have forgotten exactly all that was said at the last hearing. I think we stated our position the last time that we are interested in knowing whether or not Mr. Konigsberg has any present affiliations with the Communist party and whether or not he had any affiliations in the past; if he did have those affiliations whether they still continued in any respect. Perhaps you can refresh my recollection. I didn't re-read the transcript before this hearing because I didn't have time, and Mr. Freston was particularly assigned to it. As I recall it—I have just come to it now—Mr. Konigsberg takes the position that he does not want to answer the question as to present membership in the party or any past membership in the party.

The Witness: May I explain it? I didn't say I didn't

want to. I answered it in the way I felt I could answer it, basing my answer on the guarantees of the First Amendment. I think I pointed out too that I felt regardless of what the answer was, whether I answered yes or no to the question, that the basic principle permits a citizen to remain silent if he wishes, or to comment if he wishes, and that invasion of one's opinion, one's thoughts, one's religious beliefs, is a principle that is basic to the whole problem we are faced with in this country, the whole problem of the attack on the basic civil liberties of our period, and I feel [fol. 113] that the position I am taking in giving this answer stands with or places me with so many other citizens, many fine citizens, who feel they must take this position as their part in defending our liberties against attack. Now, you may disagree that this is an invasion. You may disagree it is an attack. Again I cite from many authorities. I don't think I need to cite to the Committee the Constitution, the First Amendment. If you permit me one, Justice Jackson in the case of Thomas vs. Collins in which he says: "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech and religion." The citation of that is 323, U. S., 516, 545.

Now, I don't think the Committee wishes me to labor that point, though I think I have an adequate legal basis for that position I am taking, and I referred the Committee previously to a comparable historical period in our history, the Alien and Sedition Laws, in which, all of which that is, our American history shows that it is a very grave and a very solemn duty of a person who believes in these principles to defend them, to use them and not to give way.

And one of the other quotations I have shows that there is nothing in our constitutional history that says in periods of stress must you give up these rights. Particularly in periods of stress you should not give up these rights. [fol. 114] I know the members of this Committee are far more familiar with this than I. I am familiar with the environment and the circumstances this Committee has to operate under. I am aware of what are my duties as a citizen.

Mr. Freston: Mr. Chairman, so that we will have some semblance of order in this record, even though we do things

in an informal way, I observed in looking through the file we didn't mark any of these documents. We merely referred to them with a general description. It might be well to mark these exhibits. And parenthetically may I state that you will recall, and undoubtedly Mr. Mosk, you have read the record and observed that on Page 6 the inquiry developed that Mr. Konigsberg had worked for a friend of his, Mrs. Bass, for as he stated about three or four months, perhaps a little over three months, and the copies furnished to the Committee ran from July to December in 1950. And he stated also that he did not recall whether he wrote a column every week. Now, in the copies furnished to the Committee apparently one was omitted during that period. We would suggest that you furnish that copy to the Committee, and it was my understanding from your answers, Mr. Konigsberg, that this was work prior to the time that you became busily engaged in law school, and I didn't realize that you apparently wrote columns after December 28. If that is——

[fol. 115] The Witness: Yes, up until April, '51.

Mr. Freston: Then I would also suggest that you also supplement the record with those items so that the record that we have heretofore identified as twenty-one photostats be made complete to cover the entire fifty articles, is that right, I believe you said——

The Witness: I have no objection. I was thinking offhand of the expense.

Mr. Mosk: Can we turn them over to the Committee for photostating, and then have the originals back?

The Witness: I haven't been employed for four years. My wife has been supporting the family.

Mr. Freston: That can be taken care of. It might be well, Mr. Chairman, if the exhibit which will consist, as I understand, of the fifty editorial pages of the California Eagle might be marked as an exhibit, and I suggest you assign a number to it so the reporter can indicate it so it can be identified.

Mr. Sterling: That will be the Committee's Exihibit 1.

Mr. Freston: I believe the same would apply to the so-called Tenney Committee exhibit which we discussed last time. I assume that would be 2.

The Witness: I don't have a copy of that. Were you asking if I had a copy?

[fol. 116] Mr. Freston: No, just so we have a mark on it so we can identify it.

Mr. Mosk: Will these exhibits be available?

Mr. Sterling: Surely.

Mr. Freston: And the next number would be the statement of Mr. Konigsberg before the Tenney Committee September 7, 1948. I assume that would be No. 3.

Mr. Sterling: Yes, that will be No. 3.

Mr. Freston: Some of these editorials were enlarged. They are not very legible.

Mr. Mosk: Are they duplicates?

Mr. Freston: These were the ones Mr. Konigsberg was referring to.

The Witness: I just remembered the one about "THE GANGSTERS, INCORPORATED".

Mr. Freston: Well there are eight. Apparently those are the eight that were referred to. Frankly these are easier to read because they are enlarged. I assume it would be proper to have them as part of Exhibit 1.

Mr. Mosk: No objection.

Mr. Freston: It might also be well, Mr. Konigsberg, to introduce as your exhibits those documents to which you referred, because I would doubt seriously if the Committee would have access to these War Department bulletins. It might be well to introduce those, and anything else [fol. 117] that you would like to submit to the Committee that is not a matter of public record.

Mr. Mosk: We will introduce then as Applicant's Exhibit 1 the War Department Technical Manual dated July, 1945, TM 28-210, and I think that a specific reference is made in the record to the page in this.

And then as Applicant's Exhibit 2 a War Department Mobilization Regulations No. 1-10, entitled "Morals", and dated, Washington, March 5, 1943, and again I think the particular portions referred to by Mr. Konigsberg in the direct testimony.

And as Applicant's Exhibit 3 a document, four pages, entitled "Army Talk Orientation Fact Sheet" No. 51, dated December 32, 1944, and there seems to be some underlying

here which is probably the references Mr. Konigsberg made in his testimony.

Where I have used Applicant's 1 make it Applicant's A, and Applicant's 2 will become Applicant's B, and Applicant's 3 will become Applicant's C.

Mr. Wright: It is to avoid confusion?

Mr. Mosk: Yes. The fourth exhibit, I think I perhaps submitted that before. Applicant's D is a copy of "National Jewish Monthly" dated July-August, 1944, with particular and only reference to Page 359.

Now, well then, if we may, Mr. Chairman, perhaps the easiest way to handle other references would be to submit [fol. 118] a memorandum referring specifically to representative clippings and articles in such a manner that the Committee may refer to it specifically if it wishes.

Mr. Sterling: That would be satisfactory.

Mr. Mosk: Now, as to these articles here, the fifty articles, we will leave them with the Committee now and such ones as the Committee wishes to photostat—

Mr. Sterling: Yes. It is my understanding that we will photostat those copies of which we do not now have and return the entire fifty to Mr. Konigsberg.

Mr. Mosk: Now, the first four which I have, A, B, C, and D are the only copies that Mr. Konigsberg has. If we may state on the record that if at some time he has a specific need for them he may withdraw them by substituting in some manner or other a copy.

Mr. Sterling: Yes, indeed.

Mr. Mosk: I think those are the only specific exhibits at this time, although we may make memorandum references to some of the others, and we will within thirty days submit character references by letter, and if I may say on the record now any of the letters that are submitted to the best of my knowledge now I think that all of the people themselves would be available for individual interrogation to expand or question any of the statements that they might make on Mr. Konigsberg, and we are prepared to bring them here as witnesses to the extent we can do it. [fol. 119] They are all busy people, but for the convenience of the Committee we will submit it by letter, and finally if the Committee feels that there is a need at the

conclusion of submissions I should like an opportunity to address the Committee with regard to the facts that have been presented.

Mr. Freston: May I ask a question of counsel?

Mr. Sterling: Yes.

Mr. Freston: One of the things that was bothering me, Mr. Mosk, is the general answer we have received to the question concerning present and past Communist affiliation, and I recognize the objection that counsel raises under the First Amendment.

Mr. Mosk: The witness.

Mr. Freston: The witness has raised. The thing that troubles me is we have an affirmative duty under the statute to certify as to this applicant's good moral character. We have endeavored to point out to him that the burden of showing that character is upon him. It appeared to me that he wasn't being quite forthright with us in not giving us an answer to those questions. He stated in effect his reason, at least as I understood it, that he did not want to answer the questions because he might sometime be accused of or prosecuted for perjury. Now, that is the rationale as I remember it, and frankly I am left in a rather confused state. As a member of this Committee I [fol. 120] have to take an affirmative act of certification as to a good moral character. I wonder if you could perhaps enlighten me or help clarify the situation so perhaps maybe I might understand it better.

Mr. Black: May I interpose another question directed to the same point, and you can answer them at one and the same time. Just to make sure that I understand the witness' position, at the last hearing—Mr. Konigsberg's position—as I understood he was perfectly willing to deny categorically he is a Communist and took that position, am I right on that?

The Witness: I said philosophical Communist.

Mr. Black: It seems to me that question we wouldn't have a right to ask you under your argument, but that we would very definitely have a right to ask you whether you are now a member of the Communist party as it is commonly understood. Now, am I right on that that you still take the position that there is no objection to your answer-

ing us categorically that you are not now a Communist, namely that you don't believe in the philosophical doctrines of communism, generally speaking, that is a matter of belief?

The Witness: I think I understand your question.

Mr. Black: But you do take the position that we do not have the right or you have no obligation to answer the question, "Are you now a member of the Communist [fol. 121] party?" and that you refuse to answer. I am not trying to argue. I just want to be sure I understand your position. Am I correct in that?

Mr. Mosk: Either way. The first question was addressed to me. I understand both questions, and I think in this type of hearing there may be some question whether counsel's comments are necessarily the comments of the applicant, so that I think that Mr. Konigsberg could well reserve the right to disagree with counsel in this field, however I feel as counsel I have an obligation to indicate in response to the question—which I think is a fair question—I think that, gentlemen, what we are faced with here, and some of the things that I would say now are probably things I would want to say by way of summation but I have not prepared any summation, but I have my feelings on the situation, it seems to me that what we are faced with here is a matter of a question of personal fitness, and that is why in the statements that Mr. Konigsberg has made, and the submissions which we intend to make within the next thirty days, we are endeavoring to address ourselves to that issue which we feel most pertinent that is "What has Mr. Konigsberg done as an individual with relation to the people with whom he has dealt, the occupations and professions that he has followed, what has he done to show affirmatively that he is of good moral character and would be a good member of the Bar?"

[fol. 122] Now, as I understood Mr. Konigsberg's position it is his feeling that one of the matters of principle on which he has always stood is the principle that one may not inquire as to a person's belief, religious, political or otherwise, and that by answering such questions as they are being asked throughout the country in these days, and in all sorts of places and under all sorts of circumstances, as

I understand Mr. Konigsberg's position that by answering such a question he is in effect giving way to and giving ground on the principle that one may not be asked these things, and that by his failure to answer he is neither affirming nor denying.

Now as to the second question, which I think is most pertinent and certainly struck me at the moment when I read through the transcript for the first time, I was struck by exactly that same question, and I asked Mr. Konigsberg about it, and I think that perhaps he should answer this himself, but we did discuss this very matter, and I know that his position is now that if you were to ask the same question today he feels that it is a question he should not have answered, and that by way of principle in coming unprepared he did not think through the principle to that extent. I think I am answering correctly.

The Witness: That is exactly what I told counsel. As you are aware I came in without counsel, without any preparation, without knowing exactly what I might be [fol. 123] asked. I did have an indication since I had informed the Committee, I appeared before the Tenney Committee, that I might be asked about that. I came prepared with nothing. In the heat or in the tension of a meeting of this kind, as you are aware, very often one will say things that one regrets later or would have said later. If I were asked that today I think my answer would be the same as to the other question as to whether I am or am not a member of the Communist party, or whether I ever was.

Mr. Black: I might say without expressing my own view on the thing that I think it must be obvious to you at least under popular conception there is a distinction between what a man believes in a doctrinaire's sense, which I think everybody agrees who at least tries to follow American principles is sacred ground as to his individual concepts. The belief of the doctrines on the one side, and at least in popular view, affiliation with a party that has its policies dominated by the Soviet Union is quite a different conception, and that the argument at least is that inquiry goes to to the very essence of a man's loyalty to the country and has nothing to do with his individual beliefs in the matter of religion or political philosophy or a code of ethics, and that is the distinction that we are trying to get at here.

The Witness: I think you are quite right, and the position [fol. 124] you take is quite correct, and I confess that I was in error at the time again due to the tension of the moment, and as I was going to say I don't think Mr. Freston's recollection is correct. I did not say that I was giving the kind of answer, was giving or refusing to answer because I was afraid of a perjury charge, as I recall. That is not the basis of refusal or the type of answer I have given. The reason that perjury discussion came up, as I recall now—I haven't been thinking about it—was in connection with the nature of the hearing where a person does not have the opportunity to cross examine and confront witnesses or see documents or things of that nature, and it so happens in the case of Owen Lattimore, who faced a perjury charge, even though he denied a half dozen ways any association with subversive elements—I am recalling from memory—it had to do with whether he expressed a certain opinion. How is a man to remember what opinions he expressed. His appeal is pending at the moment for his conviction of perjury. It is only with reference to that situation that I mentioned or commented upon the element of perjury, because that has nothing to do with the basis for my giving the kind of answer I am giving to the question as to my political affiliation, none whatsoever. You correct me on the record if I am wrong. That is my recollection of that discussion. At least I would like to say for the record that has nothing to [fol. 125] do with the type of answer I have given.

Mr. Wright: I would like to ask a question that perhaps in some stage of this proceeding you might enlighten at least this member of the Committee on, whether you consider inquiry into present membership in the Communist party as at all relevant in the inquiries of this Committee as to moral character? In other words, is it a relevant factor? Does it have any bearing? Is it a proper scope of inquiry?

Mr. Mosk: I think you have to draw this distinction. It may be under some circumstances the Committee would feel that it would be a type of information that it would like to have to reach its conclusion, and to that extent perhaps it may be considered relevant, but many relevant matters are not inquired into in legal proceedings because for other

reasons those matters are not competent testimony. And it is the position of Mr. Konigsberg here that inquiries into the realm of his political, religious or other beliefs are matters that are protected under the First Amendment to the Constitution, and therefore while it may be information which the Committee would feel it would like to have it is a field in which the Committee may not inquire by Mr. Konigsberg's position, and I think therefore perhaps I am answering your question yes and no, but I think I make my point clear as to what position Mr. Konigsberg takes.

[fol. 126] Mr. Wright: Having felt that we would like the information and being denied, now I won't argue with you that being denied that we have no way of compelling it, but are we therefore faced with going forward?

Mr. Mosk: I think that also is a fair question, and that is why we are approaching the hearing in the manner in which we do. The Committee has before it expressions of principle which it would not ordinarily have in the ordinary application for admission. The usual twenty-one or twenty-two or twenty-three year old student has nothing on the record, unless perhaps he happened to write while he was in college, but we are dealing in this situation with a mature man who has already lived almost several lives. He has had a life in the Army in which the United States Army saw fit to commission him as an officer and to give him the most responsible of positions in the orientation program; he has had a life as a social worker in which he has performed in various functions; and then only after these things did he become determined that he wanted to take up law, and break that off and go to law school.

Now, it seems to me that what we have to deal with is not to in this proceeding endeavor to determine what some particular political party or philosophy believes, but to look to the personal actions of the applicant himself and it is to this that we are directing ourselves, and, well I have [fol. 127] already talked personally to determine before I came to this Committee whether I would be able to do what I say that I am offering to do, and that is to bring responsible, reputable citizens of this community as witnesses to his good moral character and his actions, the things that he did when he was in other positions, which are a basis for

determining what he will do when he is a lawyer. And as I say I could, I know, bring responsible social workers, other lawyers, persons at the universities with whom he has dealt, all of whom are prepared to come and say that they have known him in these various capacities, and that on the basis of the things that he has done himself, not what someone else has done, but what he, Raphael Konigsberg, has done that he is of good moral character to become a member of the legal profession, and these are things that as I say we will submit affirmatively, and it seems to me that this is the affirmative answer to what I can well understand the Committee feels is a void which Mr. Konigsberg, for reasons of principles he does not feel he wants to fill, but I think that even there one must always have respect for people who at recognizing the danger to him in standing on his principle is still prepared to do that in order to carry out things that he believes in so firmly.

Mr. Wright: I commend his moral principle, let me say, but perhaps have a little doubt for his judgment.

[fol. 128] Mr. Mosk: If I may comment on that also I think that certainly—

Mr. Wright: He is making it extremely hard for the Committee.

Mr. Mosk: I understand that, and I discussed it in great detail, because obviously I recognized that. Let me say one additional word, because I think that it is relevant to this point, that is with relation to the columns. I have not read through fifty columns, I assure you, but I did scan the ones I understood the Committee had referred to, and it seems to me that what we have to recognize is not that we disagree or agree with particular things that are said here, but I think that the testimony Mr. Konigsberg has given has shown that these principles which he is exhibiting, and which the Committee at this point at least would appear to disagree with as to his judgment in asserting these principles have been things that he has lived by, and I think that this is the significant thing that we must find in examining this entire record.

The Witness: May I just make this comment as an extension of the remarks that have just been made and very much in line with the question. If I were to come up now

for the first time when so crucial a matter as following my professional career is concerned, and the Committee would question as to whether this was a sincere position, as has [fol. 129] been suggested by the record and all can be verified a thousand times, this is something I have been doing all my life.

As Mr. Mosk was speaking I found I have here a statement which refers to a previous situation very similar to the nature in which I find myself now. You may remember in 1938 Culbert Olson was elected as Governor on the democratic ticket. For many years I had been employed to develop the program of the State Relief Administration. At that time because the democrats had been in the wilderness many years and needed jobs for their faithful workers, jobs were sought by Mr. Olson and his cohorts in many divisions of the State government. Unfortunately most of the individuals, as you remember, were covered by Civil Service. The State Relief Administration was a new service so he could find a lot of jobs for his ward healers, if you will pardon the crude expression, but those were the facts. There I was Director of the State Relief Administration for one district. The County of Los Angeles was divided into sixteen districts. And Mr. Olson decided that a good way to make jobs for his friends, which meant he had to get rid of us social workers because he couldn't hire two people for the same job—but I understood it was done in some circles—he would get us out on our own principles. This is rather interesting. You see social workers, as other [fol. 130] professional groups, have evaluation scales drawn up by men and women, experts in this judging a social worker on the basis of concepts. They drew the scales and there were such questions—you won't believe it—"Was this person faithful to the Olson administration?" which hadn't been in office but a few months. Several social workers and myself opposed this on strictly a professional basis. Finally some ninety-eight of us got together protesting. We weren't concerned whether he found jobs for his faithful or not if they dismissed us on a professional level, not whether we were faithful to the Olson administration. That was the reason we were dismissed. In connection with that a group of social workers in town led by

Dorothy Weiser Smith, who is the wife of Paul Gordon Smith, Literary Editor of the Los Angeles Times, I want to quote one sentence from this long letter. I don't recall how many dozens of letters were written on my behalf. We lost. That is beside the point. Mrs. Smith in writing to Walter Chambers then the State Relief Administrator made this statement, which I say proves again that in a similar situation as I found myself today I acted then as I am acting now. At least I am consistent. Whether that is a virtue or not is another question. Mrs. Smith who certainly is in a position to judge the competence of a social worker makes this point: I should say at this time I was her assistant in the State Relief Administration: "During all the years that [fol. 131] I have known Raphael I have found him to be absolutely honest in the broadest sense of this word, and to have a type or professional integrity which is unfortunately rare even in social workers, that type which will actually lead a person to sacrifice his position and be in danger of going hungry rather than strain his professional honor and violate his code of ethics. As we grow older it becomes more difficult to disillusion any of us." She is now a lady of about seventy-five. She continues, "but I should suffer a fresh disillusionment if I found that Raphael Konigsberg had acted in a manner which would cause shame or embarrassment to honorable professional colleagues." This was written March 22, 1947. This is the very period in which Mrs. Bennett alleges the various activities she charges me with.

Mr. Freston: May I ask another question? Mr. Konigsberg, Mr. Mosk a moment ago referred to the fact that you were commissioned in the Army.

The Witness: Yes.

Mr. Freston: At the time when you were commissioned were you asked any questions concerning your then or previous membership in the Communist party?

The Witness: I don't think so. I got my commission in, let me see now, '42. It was about September I reported for duty, I think it was the first week in October. It was a direct commission. I enlisted. This is how I happened to [fol. 132] enlist. They were asking for people with hospital experience. I was then Superintendent of the Sanatorium

in Duarte, I spoke about. They were asking for people. The Surgeon General was asking for people with hospital experience to get in the Army, and they offered a direct commission, so I received a Second Lieutenant's commission. They asked what we felt we were entitled to, and I said, "Whatever you feel I deserve." The others received Major.

Mr. Mosk: You took the usual oath?

The Witness: I don't remember such a question.

Mr. Freston: If you had been asked that question were your principles the same so that you would have given the same answer as you have given this Committee.

The Witness: Yes. I am not sure that I understand. Do you mean if they asked me then the same question you are asking me now?

Mr. Freston: Yes.

The Witness: What answer would I have given?

Mr. Freston: Yes.

The Witness: I would have given the same answer I am giving now. I have given such answers before. I was asked by the Tenney Committee. I am not making up answers to suit this hearing. There was another hearing you never referred to before the Dillworth Committee hearing which I think was a sub-committee of the Tenney Committee. [fol. 133] It was about a year after the Tenney hearing. I was asked that question then. I was asked that question when I campaigned for the School Board. The committee of citizens who interviewed me, I did not know, they interviewed seventy-five people all over. The- selected Dr. Claude Hudson and myself and some Union man whose name I have forgotten, three candidates, and they asked me those questions then because they were concerned. They had a right to be. I gave the same answer.

Mr. Freston: Do you recall the name of the committee?

The Witness: The Citizens Committee for Better Education. There was a Mrs. Yanow, I think. I think her husband is an attorney. There was a—Her husband is a screen writer. I can find out the names. I don't recall off-hand. There was a committee of three that interviewed me. One was a Mrs. John— He is a very prominent radio writer, not screen writer. I have forgotten the name. I could find it out. A Dr. George Mangold, a Professor of Sociology at

S.C. He has a beautiful pipe organ built in his house. He was Chairman of the Committee, and Mrs. Yanow, and this other lady I don't remember interviewed me. They asked me the same question. That was when I first ran for the School Board, and then I ran two years later, and I don't recall whether I had any interviews because they already knew me then.

[fol. 134] Mr. Freston: Did you ever find any copies of the articles that you wrote in the Jewish Voice?

The Witness: No, sir, I didn't. I probably didn't keep them. I am sure the Editor or the newspaper files must have them.

Mr. Freston: Does it have an office here?

The Witness: Yes, they moved recently. I think it is Fourth and Main. They were down on Pico someplace. I just saw in the paper. Mr. Samuel Gach is the Editor. He was the Editor then, and I believe he still is. It was just a period of a few months. It may have been almost a year. Those were simply reports of my experiences in the Army as I recalled them, because I was at that time giving reports all over the community to different groups that asked me to. They were asking a lot of people that returned from the Army to tell about their experiences and I think that is essentially what they were. I don't remember what I wrote in those.

Mr. Freston: I have no more questions.

Mr. Sterling: I have no more questions.

Mr. Mosk: If I understand correctly we will submit a memorandum, and we will submit letters at some subsequent time.

Mr. Sterling: You would like to have an opportunity to be heard further?

Mr. Mosk: Yes.

[fol. 135] Mr. Sterling: Very well, we will adjourn the hearing upon call.

End of session.

[fols. 136-137] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 138] THE STATE BAR OF CALIFORNIA

COMMITTEE OF BAR EXAMINERS

SOUTHERN SUBCOMMITTEE

LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG, application for permission to take Bar Examination

(No. 1194)

HEARING OF JANUARY 27, 1954

APPEARANCES:

Leroy A. Wright, II, Vice-Chairman
Arthur E. Freston, Member of Committee
Thomas H. McGovern, Member of Committee
Sharp Whitmore, Member of Committee
Alma Stayton, Assistant Secretary
Raphael Konigsberg, Applicant
Edward Mosk, Applicant's Counsel
Marion Farrell, Reporter

COLLOQUY BETWEEN ~~HR. BERS~~ members AND COUNSEL

Mr. Leroy A. Wright, II: I would like to introduce to you two new members of the Committee. The Committee has undergone some changes here in the South since our last hearing. Mr. Whitmore, Mr. Konigsberg and Mr. Mosk, and Mr. McGovern. In view of these changes, Mr. Mosk, they culminated in this way: First, Mr. Sterling's term expired, and Mr. Whitmore was appointed to the place of Mr. Sterling. Then Harold Black, whom I think you know, who participated in both the other hearings, felt that the [fol. 139] duties of President of the Los Angeles Bar were such that he couldn't conscientiously perform that job and assume any semblance of practice if he was handling this job too. He resigned and has been replaced by Mr. McGovern. That leaves Mr. Freston and myself constituting the two members of the Southern Subcommittee who have participated in these hearings. Under the rules of the Committee two will constitute a quorum.

Mr. Edward Mosk: May I say this: I was of course familiar with the fact that there had been changes. I have discussed it with Mr. Konigsberg. I don't know how the rules of the Committee apply, but we would have no objection if the two members who have heard Mr. Konigsberg and heard our presentation——

Mr. Wright: That is what I was going to suggest as the way that the two members, being Mr. Freston and myself, would be the members to whom this matter would be submitted. Mr. Whitmore and Mr. McGovern not having heard the presentation before would not participate in the decision, however if there is a necessity for referring the matter or taking the matter up before the full Committee they then being members of the full Committee, and it more or less being a trial of de novo, if it comes to that stage they would of course participate, so their withdrawal from participation would be only in so far as the deliberations and the decisions of the Southern Subcommittee would be concerned.

[fol. 140] Mr. Mosk: That is quite satisfactory to us. We have full confidence in the members of the Committee and of course would prefer to have the decision made by those who have actually heard it.

Mr. Wright: We discussed it here before you came in, and we felt it would not be proper for those who had not participated or heard any of the evidence to merely on the basis of a transcript participate. So with that understanding, and if that is satisfactory—

Mr. Mosk: That is satisfactory to us.

Mr. Wright: First of all I would like to say we apologize for keeping you waiting. You were scheduled for eleven. We got behind in our early morning schedule. We started at 8:30.

Mr. Mosk: We could see by the numbers waiting you were working all the time.

So far as this hearing is concerned, the primary purpose for which we requested the additional hearing was for the purpose of securing and presenting to the Committee letters of recommendation, letters of reference, character reputation, and second for perhaps a few summary remarks on behalf of Mr. Konigsberg. Now I have prepared that so that it perhaps will assist the Committee somewhat;

I have the letters in a single document with a covery memorandum which tells who the people are who are writing. [fol. 141] I have additional copies for each member of the Committee of the list itself, although not additional copies of the letters. I also have a memorandum which was prepared in support of the application, and in view of that fact I would only want a very few minutes in which to perhaps supplement it, but I would just briefly like to run through this so that the record will be clear on the list of persons.

Now, this list of persons who have written letters, all of course on their own volition, and all based on their knowledge of Mr. Konigsberg over a period of many years, each of the persons did indicate when it was they knew Mr. Konigsberg; under what circumstances and how well. Some of them go into more detail and others less, as is usually the case in letters of this type.

I have divided the list which appears in connection with the letters into categories, and point out to the Committee that there are in this list three attorneys, there are nine who fall into the general classification of businessmen in the community, three doctors, three connected with the ministry, three who are professors at universities, eight who are in varying fields of social work, three whom we have classified simply as other professionals, and three who are just individuals without specific background, but we feel persons of some significance. Then in addition there are six letters which we have attached here which [fol. 142] were written for Mr. Konigsberg in 1940 at the time of some of his problems with the State Relief Administration which we have discussed at previous hearings before this Committee.

Mr. Wright: You referred to a Mrs.——

Mr. Konigsberg: Dorothy Wysor Smith.

Mr. Mosk: We have attached those complete letters, and while they don't specifically refer to this situation we feel they are sufficiently pertinent in their remarks to be applicable also to this situation. Now, I do not want to read all of these letters and will not take the time of the Committee to do that, but I would like to kind of run through them and make some references with relation to them.

We have a letter by Attorney Paul Major of San Pedro who points out in part:

"I recommend Mr. Konigsberg unreservedly as a person of high moral principle and character. He has an excellent reputation and should be a real credit to the bar. He is a much more profound person than the average bar applicant and exhibits a social consciousness which, in my opinion, is unfortunately too rare among applicants."

Now there is a letter here from Attorney Mortimer Vogel. Most of the letters we asked they be sent directly to me. Apparently in this case he sent it to the Committee with a copy to me. I think there is one other person who [fol. 143] did that.

Mr. Freston: We have it here. (Handing letter to Mr. Mosk)

Mr. Mosk: We also have a letter from Mr. Albert C. Bricker who is a well known insurance man in this community who says:

"I have known Mr. Konigsberg for approximately eight years as a man of integrity and of the highest moral character, concerning which, to my knowledge, there has never been any question. Throughout the years I have known Mr. Konigsberg he has impressed me as an unusually intelligent and capable person eminently suited for practice in the legal profession."

I have a letter from a George Stiller, advertising and public relations, who says in part:

"It is my firm and sincere conviction that he would be a worthy addition to the legal profession because of his wide educational background, his integrity and his high character.

"Coupled with these valued attributes is another I deem essential in an attorney—a warm and human personality, deeply interested in people, as people, and in helping solve their problems."

A letter from James L. Tuma, who is connected with the U. S. Geophysical Corporation.

Mr. Konigsberg: They make oil and mining explorations. [fol. 144] Mr. Mosk: I was looking at the letter head and it said "Airborne Geophysics". I didn't know what it

meant. He says in part: He says that he became acquainted with Mr. Konigsberg at the City of Hope Sanitarium where he was engaged in a survey of personnel and administration of the institution, and he says:

"The departments directed by him were of vital importance in administering the needs of the patients from the date of entry to the date of discharge. It required a great deal of humanitarian understanding and guidance to keep the patients contented, so vitally necessary to the recovery from tuberculosis.

"I was in close contact with him for a period of six months and know that he has a very fine character, good judgment, and a trained mind for detail and research. I am satisfied that he is fully qualified to become a good and successful lawyer."

A letter from the Right Reverend Monsignor Thomas J. O'Dwyer who says:

"I am writing you on behalf of Raphael Konigsberg now residing at 2446 Echo Park Avenue, Los Angeles.

"I wish to advise that I was well acquainted with him between the years 1936 and 1940. During that period he was employed as a member of the staff of the Council of Social Agencies in Los Angeles. He enjoyed an excellent [fol. 145] reputation among all who were acquainted with him during those years.

"Mr. Konigsberg resigned his position with the above-mentioned Council of Social Agencies and accepted an assignment with the newly-established State Relief Administration. Later he joined the armed forces and I assume he will present to you references from persons who knew him in the succeeding years.

"I do not hesitate to recommend him to you. I am satisfied that he will measure up to the high requirements established for members of the legal profession."

Then we have a very long letter from Victor S. Netterville of the School of Law of the University of Southern California, and Professor Netterville writes specifically of the period when he knew Mr. Konigsberg which was during his student days at the University of Southern California, and Professor Netterville addressing himself spe-

cifically to the problem that is before this Committee says in part:

"It was my impression that Mr. Konigsberg is a man with the courage of his convictions, but not one who holds these convictions blindly or with any but the most honest motives. He seems to hold the Constitution in high esteem and is a vigorous supporter of civil rights. But it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time [fol. 146] to time of balancing the interests of the individual against the interests of society when the legislature takes action to protect society as a whole from threatened dangers. Throughout our discussions—discussions in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussions. He indicated to me an open-mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen.

"Based solely then upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the bar."

A letter from Harry Friedman, Assistant District Supervisor of the Department of Education of the State of California who writes:

"During my frequent contacts with Mr. Konigsberg I found him to be responsible for his statements to the patients he served and to the agencies and individuals he dealt with in their behalf. He was always sincere in his efforts to better their conditions, and in developing programs for them, showing imagination and resourcefulness. At no time during my relationship with Mr. Konigsberg have I seen evidence of anything but excellent moral character."

A letter from Mrs. Jeanne G. Young, Director of Medical [fol. 147] Social Service at the Cedars of Lebanon Hospital, who writes:

"I first became acquainted with Mr. Konigsberg in his capacity as Director of Social Service, City of Hope Sani-

tarium, Duarte, California and served as a member of his staff in the capacity of supervisor from February, 1948 through August, 1949, at which time I left in order to take my present position as Director of Social Service at Cedars of Lebanon Hospital. During the time of our association I was most impressed by Mr. Konigsberg's sincerity and integrity, both as an individual and in his professional capacity. I found him to be a person of principled conviction and willing to defend his principles even at great personal sacrifice.

"I was especially impressed with his concern for the total welfare of our patients and staff."

Now, that is only a quick sampling of the letters which are here. It is our position, of course, that these letters are sincere expressions of the feelings of persons over all of the varying years of Mr. Konigsberg's career. Now, I have copies of the letters themselves, and I think you apparently have a letter from Rabbi Jehudah Cohen, which I only have a copy of in here. With those two letters then we will submit this as Applicant's exhibit next in order.

Mr. Wright: That would be Applicant's Exhibit E if my [fol. 148] recollection is correct.

Mr. Mosk: I also have two additional copies of the list itself for the members of the Committee if they wish.

Mr. Wright: They will be received and marked. I will not put the mark on them right now. (Applicant's Exhibit E received at this point)

Mr. Mosk: Now, we have next then and finally a rather brief memorandum. I felt that the record itself and Mr. Konigsberg's own comments probably speak better for him than anything that could be prepared by way of memorandum, however I have this eight page memorandum and with copies for at least three members of the Committee which I would like to submit, and to amplify with a few additional remarks. I would like to say this:

Mr. Wright: Pardon me just a minute. I was wondering, Mr. Freston, do you have any questions you wanted to ask?

Mr. Freston: I don't believe so. I assume you will file the memorandum.

Mr. Mosk: Yes.

Mr. Wright: I take it then that this is in the nature of summation?

Mr. Mosk: That would be my intention. As I have indicated I feel that Mr. Konigsberg in two previous hearings has expressed his feelings about this hearing. One additional thing has happened since the last hearing, and that [fol. 149] is that he has received notification that he actually did pass the Bar, which I think now places the present issue even more squarely than it did earlier. I would like to thank the members of the Committee on behalf of Mr. Konigsberg for having given him the opportunity to show that he was able to pass the Bar examination itself. You probably will recall there was some question about allowing him to take the examination at an earlier date. It seems to me that this Committee has a very grave responsibility in this case. I think the issue is very squarely this: Whether the qualifications for the practice of law in California may be determined by the political, economic and social thinking of the applicant. I think this is the issue very squarely and I think that this is the matter which will have to be decided by this Committee.

I am satisfied that this is a field in which this Committee does not have the power or the authority to intrude. We have a situation where if this Committee is to decide that Mr. Konigsberg by reason of expressions of opinion or political ideas that he may have expressed at some time in the past is to be denied the right to practice law in the State of California then no person is going to be safe, either those who are attorneys and who are now practicing or who hope someday to practice in the State of California, because if this Committee can set up standards for deter- [fol. 150] mining who is to practice law on the basis of the Committee's or anyone else's opinions of what is right and what is wrong in the fields of politics, economics and social theories, then these criteria may be changed from day to day and from month to month and from year to year so that those who are at any particular time sitting as the Board and sitting in judgment on future applicants for membership admission to the Bar of the State of California, the entire determination will then be in the hands of those who sit on the board at a particular time, and I submit that this is contrary to the most basic principles of American life. We have always believed that each man stands on his own feet.

We have always said that the questions of moral character that are involved in admission to the Bar are matters of criminality, are matters dealing with moral turpitude. Mr. Konigsberg has at none of these hearings been accused of any acts which fall within the classification of what we have known as moral turpitude or criminality. The maximum that has been charged here, regardless of the question of proof, in giving to the—let us call it—accusation, the maximum weight to which it is entitled would be to assume that at some time, some thirteen, approximately thirteen years ago he may have been a member of an organization which is, let us say, unpopular in the public life today. Beyond that the only other matter which has come [fol. 151] before us which we are in a position to rebutt is the matter of certain articles which he has written. We can only presume that these articles were brought forward because they were not necessarily in line with the general political thinking of the majority of the American people at the particular time, but as soon as we start examining the writings of a person or the thinking of a person or even the political affiliations of a person we enter into a field where there is no stopping. And I submit that this responsibility lies with the members of this Committee who must decide whether because of a person's political, economic or social thinking this Committee can set itself up to determine that he may not practice law in the State of California. It is my opinion that this is contrary to the most fundamental principles of American life, and I submit that Mr. Konigsberg's application should be accepted, and I am satisfied that he will be a credit to the profession of law.

Mr. Wright: Thank you, Mr. Mosk. I was wondering whether or not you in the course of your memorandum you had addressed yourself at all to the problem of the disinclination of the applicant to respond to questions proposed by the Committee.

Mr. Mosk: I have addressed myself to that. The memorandum, however, is not lengthy and if you wish I would [fol. 152] like to say just a brief word in addition then on that point.

Mr. Wright: That is one thing that frankly bothers me that we discussed in our previous hearing.

Mr. Mosk: I can understand why that is a matter that does bother you. I think that I indicated at the previous hearing by analogy one of the answers that I feel is pertinent to this. I indicated, and I feel that in every judicial proceeding and every legal proceeding there are many matters that the tribunal would like well to know to assist it in reaching its conclusion.

The matter that comes to mind most quickly, of course, is simple hearsay which would always be of interest to the judge to know. It would always be helpful if he could have some of the hearsay matters, and many of which we would say, if we were not learned in the rules of evidence, that this might be helpful to the court, and yet the rules of evidence for good and sufficient reasons say that these are matters, because of certain fundamental principles, that the court may not know.

Now, it is implicit in what I have said up until now that matters of the political, economic and social nature, matters of the mind, cannot become the standards upon which the decision as to whether an applicant is of good moral character can be predicated. There are basic principles as to whether the Committee or any other tribunal may in- [fol. 153] quire into matters of the mind and thinking.

Now, Mr. Konigsberg is obviously, as indicated by many of these letters, and has always been a man of great principle, and I feel that the Committee, since it is our position that it may not inquire into these fields must not make its decision based on Mr. Konigsberg's principal refusal to answer questions in a field in which the Committee may not inquire. And this fundamentally is our answer that these are matters which can have no bearing on his moral fitness to practice law, and since they cannot I think it then becomes even a greater indication of the extreme principles upon which this man stands, and an even greater indication that as a lawyer he will be a credit to the legal profession.

Mr. Wright: You will file the memorandum?

Mr. Mosk: Yes. I think I have four copies there which I am filing. (Applicant's Exhibit F received at this point)

Mr. Wright: With that I take it the matter is submitted.

Mr. Mosk: It is submitted as far as I am concerned.

Mr. Wright: At least it has been and will be more of a

mental exercise, bar none, that I have tackled for a long time.

Mr. Konigsberg was then excused.

[fols. 154-155] Reporter's Certificate to the foregoing transcript omitted in printing.

[fol. 156] EXHIBIT "B" TO PETITION

THE STATE BAR OF CALIFORNIA

COMMITTEE OF BAR EXAMINERS

LOS ANGELES

In the Matter of the Application of RAPHAEL KONIGSBERG, appeal from determination of Southern Sub-Committee

(No. 1194)

Hearing of March 13, 1954

APPEARANCES:

Maurice D. L. Fuller, Chairman
Leroy A. Wright II, Vice-Chairman
Arthur E. Freston, Member of Committee
William M. Maxfield, Member of Committee
Thomas H. McGovern, Member of Committee
Vincent H. O'Donnell, Member of Committee
Sharp Whitmore, Member of Committee
Goscoe O. Farley, Secretary
Alma Stayton, Assistant Secretary
Raphael Konigsberg, Applicant
Edward Mosk, Applicant's Counsel
Carol E. Jacobs, Reporter

COLLOQUY BETWEEN MEMBERS, COUNSEL AND APPLICANT

Mr. Maurice D. L. Fuller: I will introduce the people around the table. Mr. Whitmore, Mr. Farley, I am Mr. Fuller, Mr. Wright, the reporter, Mr. Freston, Mr. Maxfield, Mr. McGovern, Mr. O'Donnell.

Gentlemen, this is an appeal from the determination of the Southern Subcommittee and it is a matter of a hearing or submission to the entire Committee.

[fol. 157] It has been the practice of the Committee in the past to deem the record which has been introduced before the Subcommittee as part of the record before the main Committee, and I might tell you the documents now already in the record.

One, we have a transcript of the prior hearings. I assume you have had a copy of that and are familiar with it. Then, there is a document entitled "Army Talk" which is Applicant's Exhibit C. There is another printed pamphlet entitled "Morale" which is Applicant's No. B. There is a pamphlet entitled "TM 28-210" which is Applicant's A. There is a Memorandum in Support of Application which is Applicant's F.

There is a black photostat of various printed articles by Raphael Konigsberg which is entitled Committee's No. 1, and that I believe is to be returned to you and we will use in place——

Mr. Edward Mosk: That is yours, the photostat copy.

Mr. Fuller: I see, we will use them interchangeably.

Mr. Raphael Konigsberg: Sometime I'd like to get the Army publications back.

Mr. Fuller: I think some time they will be available to you.

We have here a list of persons testifying to the character [fol. 158] of Raphael Konigsberg which is entitled Applicant's E. I think that carries A through F except for D. Here is D, another printed pamphlet "Why I Am in This Fight" which is Applicant's D, and then a letter dated September 19, 1948, which is attached to Statement of Raphael Konigsberg which is marked Committee's No. 3. Then a transcript of the testimony, your testimony, Mr. Konigsberg, before the California Senate Fact Finding Committee on U&-American Activities which is——

Mr. Konigsberg: The Tenney Committee, sir?

Mr. Fuller: I don't know. Mr. Tenney seemed to be the Chairman of this Committee. That is Committee's No. 2. The other documents in the record which are not identified but which we will deem part of the record are: One, your

Student's Application and Affidavit which was filed with the Committee back in June 30, 1953; then your application more recently filed on—

Mr. Goscoe O. Farley: This is Registration as a law student.

Mr. Fuller: This is original registration of law student dated December 5, 1950. Then there has previously been furnished to the Committee the full pages of the periodicals from which the editorial comments were taken. That not having a number yet, we will give it the Committee's next in order. I think that is No. 4, is that right? Anyway, it will take the appropriate number, I believe No. 4. That [fol. 159] will also be part of the record. As I previously told you the whole Committee will consider the whole record and read all the transcripts of the previous hearings—most of us have read all of it already. Now we will give you an opportunity, Mr. Mosk or Mr. Konigsberg, to say anything you wish to say or give any testimony you wish to give.

Mr. Mosk: We have this one thing, Mr. Chairman; that we are prepared to submit the matter on the record as it is now in its present condition with the exception that Mr. Konigsberg would like to add some personal remarks of his own including a statement of his general background and experience record which I think is not in the record as it now appears.

With the Committee's permission, Mr. Konigsberg would like to address himself to the Committee at this time.

STATEMENT OF MR. KONIGSBERG

Mr. Konigsberg: I will read slowly so the stenographer can get it. The other had trouble last time. I will read slower than usual.

I recognize that the Committee of Bar Examiners of the State Bar of California is empowered to pass upon the moral character of applicants for admission to the bar. This power is based upon Section 6060(c) of the Business and Professions Code:

"To be certified to the Supreme Court for admission and [fol. 160] a license to practice law a person shall be of good moral character."

A search of California cases I have made involving judicial interpretation of this code section reveals that without exception such determination has been based upon the presence or absence of conduct of a criminal nature, conduct involving moral turpitude, on the part of the applicant for admission. No instance could I find either of an applicant refused admission or of an attorney disbarred or suspended where the decision was based on the beliefs of the applicant or on any other ground but one of a criminal nature or involving moral turpitude.

That interpretation and the view that such must have been the legislative intent, is strongly supported by the grounds specifically enumerated by the legislature for the disbarment or suspension of attorneys, stated in Sections 6101 to 6106 of the above mentioned code:

"Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause of disbarment or suspension" also "disobedience or violation of a court order . . . appearing for a party without authority" or "commission of an act of moral turpitude, dishonesty or corruption."

That interpretation is supported further by the act of the Committee of Bar Examiners itself in not including in the application form which all applicants have to fill in any [fol. 161] questions relating to beliefs in the series of questions dealing with "Moral Character." Specifically, Questions 16 to 23 inclusive inquire only whether applicant has violated any law or ordinance or committed any felony or misdemeanor, etc.

The State Bar has been administering the State Bar Act and its provisions relating to applicants for admission for many years. It must be presumed to have drafted this questionnaire. It is drafted in a manner calculated to cover all of the qualifications essential for admission to the bar. By its failure to include therein any questions even remotely related to those of the subject matter of which I was asked, the State Bar has construed the term "moral character" then as having no relationship to such inquiries. This Committee, therefore, should not now attempt to avoid the State Bar's construction of the law for the purpose of sustaining its present position.

Furthermore, the addressing of questions concerning

personal beliefs to the applicant under circumstances in which other applicants are not required in any manner to deal with the general subject matter of such questions places me in a special category and establishes for me special standards not applied to others. Such discrimination is a violation in my opinion of the equal protection clause of the 14th Amendment of the Constitution of the United States and Article I, Sections 11 and 12 of the California [fol. 162] Constitution.

Accepting then, as we must, that the "good and moral character" qualifications must be based upon the presence or absence of acts of a criminal nature, it is significant that the Subcommittee of Bar Examiners has not charged me with any such criminal acts nor have I ever been guilty of any such acts. I submit, therefore, that on this ground I must be found to of good moral character and so entitled to admission to the bar.

The only acts or words alleged by the Committee against me in the three hearings which I had are those involving my alleged beliefs. Now, unless therefore the Committee is prepared to take the position that it is now a crime in the State of California for applicants to the bar to have beliefs which are different, (if that be the case) from the views of other persons in the community or of the majority of the Bar Examiners itself, then the Committee has not alleged any grounds which may legally be the basis for refusing to recommend admission to the bar.

If the Committee's refusal in this case is based on my beliefs as appears to be the case from the nature of the hearings, then the Committee clearly is imposing a political test on the privilege of practicing law in this state. Such a position, as the members of the Committee surely know, would do great violence to the fundamental constitutional rights of lawyers, as of all citizens, to hold any [fol. 163] views that they desire. Such a position would be comparable to imposing a test oath, so abhorrent to the American concept of justice. The American Bar Association Journal No. 37 ABA Journal 123 (1951) has a series of statements signed by outstanding leaders of the profession nationally, commenting on this very point.

The Subcommittee of Bar Examiners may, then, be pro-

ceeding on the basis of the power granted it by the recently enacted Section 6064.1, the constitutionality of which has not yet been determined:

"No person who advocated overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

As the transcripts of my hearings will show, I have stated unequivocally that I have never advocated overthrow of the government by force and violence, that I do not now hold any such position. Furthermore, there is not a single act or word in all of the many alleged by the Subcommittee in the hearings and covering many years of my active public life which even remotely suggests any such advocacy by me. Quite the contrary, if I may say so, the entire record shows only that I was an informed and active citizen who at all times was moved strongly by my belief in the duties of a citizen in our society.

[fol. 164] It follows, therefore, that on this ground too, the Subcommittee has no legal basis for holding that I am morally unfit to practice law in this state.

It may be noted in passing that Section 6067 of the Business and Professions Code, which declares that "Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California" is not directly an issue in this case, but I wish to make it clear that I am ready at any time to take such oath.

Assuming, then, that Section 6064.1 is constitutional, it is clear that that law definitely sets the limit in this state to any inquiry as to political beliefs of lawyers, setting aside for the moment the fundamental limitations of the First Amendment. Beyond the questions, then, as to applicant's present personal advocacy of overthrow of the government by force and violence no inquiry may go. That question having been asked me and answered, no other inquiry concerning my alleged beliefs may be made.

The history of Section 6064.1 establishes that the Legislature in 1951, the year of its enactment, specifically re-

jected the concept of an expurgatory oath for lawyers in this state or for candidates for admission to the bar. This oath was contained in what was then known as Senate Bill 1666 which proposed to add such an oath to the Business [fol. 165] and Professions Code. This Bill would have required that there be added to the Business and Professions Code the following oath for lawyers and applicants for admission to the bar:

"And I do further swear or affirm that I do not advocate nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force, violence, or other unlawful means, and that during such time as I am a member of the State Bar of California, I will not advocate nor become a member of any party or organization, political or otherwise, that advocates . . ." etc.

Senate Bill 1666 failed of passage. Then Section 6064.1 was sponsored by the State Bar itself and was enacted. This section now occupies the field on that subject, therefore, the Committee only has the power under this statute, as I see it, to concern itself with the present personal advocacy of the applicant. It cannot inquire into the political affiliations, beliefs or associations of the applicant, since the Legislature, by failing to adopt Senate Bill 1666, excluded the other areas in the realm of belief. No such personal advocacy of force or violence was even alleged against me in the three hearings.

Now, despite the limitations imposed by the present law, the Subcommittee persisted in directing to me many other inquiries concerning my beliefs and ideas. In doing so, I [fol. 166] I regret to say the Committee clearly displayed the mark of the censor. The questions of the Committee related to my participation in campaigns to secure a peaceful solution of international problems or such matters as criticism of current foreign and domestic policies. Surely it is not criminal yet in this country and state to express opinions about current events. I might mention in passing that many of these opinions are expressed by leaders of the Bar, Justices Black and Douglas, Dean Griswold of Harvard. Is the Committee prepared to say such persons

are morally unfit to practice law in the State of California?

One must conclude, from the nature of the Committee's questions, it believes those who do offer such opinions not fit to practice law. Such a policy is one of opposition to ideas, clearly a policy that is antagonistic to the genius of the American democratic system. To show how abhorrent such a practice is, we need only ask this question: Could the State Legislature pass a law saying that anyone who opposed war or who favored fair employment practices, for example, was not fit to practice law in this state?

My position, stated briefly, is based upon the rights guaranteed to every citizen, lawyer or not, under the First Amendment of the Constitution of the United States, and Article I, Section 1 of the California State Constitution. We need not present any detailed, documentary evidence [fol. 167] to support the position that this First Amendment is relatively clear, but to summarize my position:

(1) This Committee of Bar Examiners of the State Bar of California is not empowered to make an individual's beliefs and opinions (with the exceptions noted, that is Section 6064.1) the basis for determining his moral fitness to practice law.

(2) Such a policy, if established, would destroy the independence of the Bar and destroy the freedom of choice of counsel.

(3) Since no other charge was offered against the applicant but the one allegedly involving unpopular beliefs, no constitutionally recognizable grounds reflecting adversely upon my moral character were offered and, therefore, I have affirmatively carried the burden of proving my good moral character and I am entitled to a Certificate of Admission from the Committee.

The conclusion is unavoidable that the Southern Subcommittee failed to consider properly the evidence in this case and I base this conclusion on these three grounds or items:

First, the Subcommittee in violation of its own rule, Rule 10, Section 101, failed to state any findings of fact or specific reasons for its decision when it informed me by mail it was denying me certification. This is such an unreason-

able act as to constitute both abuse of discretion and in- [fol. 168] fringement of my rights under Article I, Section 1 of the California Constitution and under the Fourteenth Amendment of the Constitution of the United States.

Even in cases reviewing loyalty hearings relating to public employment it has been held that due process of law is not to be ignored, though only a privilege (such as the privilege of practicing law) is being considered and I cite the two cases of *Joint-Anti-Fascist Committee vs McGrath* 341 U.S. 123, and *Weiman vs Updegraff* 344 U.S. 183. Furthermore, the U. S. Supreme Court has often held, as the Committee well knows, that neither Congress nor the states (and therefore, nor any state body such as the Committee) can circumvent limitations on these constitutional powers by indirection or by the pretense of regulation and I cite the authority, among many, *Frost vs Railroad Commission of California* 271 U.S. 583; *Near vs Minnesota,* 283 U.S. 697.

Second, a further question relating to the issue of fair play and due process of law is raised by the fact that ever since I began the study of law in September of 1950, the Committee of Bar Examiners has been informed of my record and my character. If there is a question as to my moral character, why did the Committee wait over three years until just ten days before the Bar examination to call me in for interrogation? Why did it permit me to pursue a [fol. 169] long and strenuous course of study for a man of comparatively advanced age at great sacrifice and effort to myself and my family? Since I began the study of law at the age of thirty-nine and a half years, I can safely say my moral character would not be likely to change while I was studying law.

Finally, a dispassionate evaluation of the total record made over a long and comparatively public career must lead to the conclusion that at any rate I am a rather mature person with a pronounced sense of personal responsibility for my duties as a citizen which I have attempted to discharge, and one who would conscientiously discharge the duties of a lawyer. This conclusion, if I may be so immodest, is based on the following brief record of experience and education:

First, graduation from USC Law School in June 1953, and passing of the October 1953 Bar Examination in California.

Secondly, receiving a Bachelor of Arts Degree at Ohio State University, Columbus, Ohio, June 1931, where I received teaching credentials and completed four years work in three.

Third, the Master of Arts degree in Social Administration from the Graduate School, Ohio State University, August 1935. I was granted a scholarship for this work.

[fol. 170] Fourth, completed one year's course in Local Municipal Administration (because of my interest in public affairs) given by the Institute for Training in Municipal Administration in Chicago 1940 to '41.

Fifth, completed two seminars of work at Claremont College, Claremont, California in preparation for the Doctor of Philosophy degree, 1941-42. Unfortunately, this was interrupted by World War II and my enlistment therein.

As to my professional experience, from 1932 to 1933 I was a teacher in the high schools of Cleveland, Ohio, teaching American History and English Literature.

From 1933 to 1950, social work executive for various agencies in Washington, D. C., Cleveland, Ohio and Los Angeles.

As to my military service, I enlisted in the U. S. Army October 1942. Commissioned as Second Lieutenant of the Medical Administrative Corps. Served as Commanding Officer, Detachment of Patients, Lovell General Hospital, Fort Devens, Massachusetts until February 1944. Then sent to Army Orientation Staff School, Lexington, Virginia for further training in orientation. Sent overseas June 1944. I served in North Africa, Italy, France and Germany, primarily as Orientation Officer.

I was promoted to Captain and served as Orientation Officer for the entire U. S. Seventh Army in Germany in [fol. 171] which post I was responsible for the orientation program for 400,000 American troops. Honorably discharged April 1946.

Now, as to my civic affairs, I was a candidate for office three times. I was a candidate for the Los Angeles Board

of Education in 1947 and '49. I was a candidate for the State Assembly in 1950.

Finally, with respect to my character, the letters you received from 36 outstanding citizens in this community I think should bear some testimony. These people were doctors, lawyers, ministers, business men, social workers. I have asked the weight the Committee should attach to these letters and cite two cases: California Supreme Court case *In re Stepsay* 15 Cal. 2nd 71 (1940), the Court said such letters are "entitled to a most respectful consideration by this court when passing upon petitioner's moral fitness to practice law in this state."

And again in the case of Warbasse vs State Bar 219 Cal. 566 (1933), the Supreme Court said, "We believe that the opinions of those who have had ample opportunity to know his character and to observe his conduct over a long period of years is entitled to a great deal of weight."

As further evidence of my conclusion I have affirmatively carried the burden of proving my good moral character, [fol. 172] may I point to my conduct before the Subcommittee in three hearings. In the hearings may I say I steadfastly demonstrated my adherence to the basic constitutional concepts of our society. Even when a member of the Committee pointedly implied that persistence in this attitude might cost me my license to practice law, I declared it to be my duty as a citizen to defend our constitutional principles and to refuse to join in what I believed to be undemocratic conduct or activities.

In closing, I respectfully urge the Committee of Bar Examiners to decide this case on the basis of broad principle. A reversal of the action of the Subcommittee, which I ask, a reversal of the case based on constitutional guarantees and elementary justice, will go far in my opinion in arresting the trend toward the application of thought control to the Bar, toward the destruction of the independence of the Bar, and would strengthen faith in our democratic system.

I respectfully submit this as my statement.

Colloquy between Members, Counsel and Applicant

Mr. Mosk: That completes our presentation. We have nothing further to offer at this time.

Mr. Fuller: I am sure some questions may have occurred to the northern members of the Committee who have read the record. I think they ought to ask them to complete the record.

Mr. Konigsberg, you made a statement just now and I [fol. 173] think it is somewhere else in the record, speaking of some prior knowledge of the Committee. Are you contending that the Committee knew anything about you prior to these recent proceedings other than set forth in this application?

Mr. Konigsberg: Yes, because the petition registering as a law student was filed back in 1950 . . .

Mr. Fuller: That document you are now exhibiting . . .

Mr. Konigsberg: . . . and in that application was given pertinent information as to my activities. That document too, rather in connection with that document. The Committee has the copy I believe. It is of my appearance before the Tenney Committee, and so forth, all of which suggest, I presume, in the minds of the Committee grounds for suspicion. They existed in 1950 and I have done nothing since then. I have been too busy studying law to do anything else.

Mr. Fuller: Did we have before us any transcript of the Tenney Committee hearings at the time we got this?

Mr. Farley: I don't think so.

Mr. Mosk: I think there is a question on the form which requires reference to that.

Mr. Fuller: What I am trying to find out is if there is anything besides this form that he is relying on.

[fol. 174] Mr. Konigsberg, will you point out on that form the particular material you are speaking about?

Mr. Konigsberg: The first is my statement in the first question of my employment with the California Eagle. The very first questions directed to me at the first hearing by the Committee were, in effect, why was I writing this material for the California Eagle.

Mr. Fuller: What you are saying . . .

Mr. Konigsberg: I report that I was employed at the

California Eagle, and the documents you have here are reprints, duplicates of the columns I wrote for the Eagle.

Mr. Fuller: You have reason to believe that this Committee which receives these applications—of which we receive hundreds and thousands—will run them all down, make the investigation we now make at the time of admission to practice, because that is not a fact.

Mr. Konigsberg: Isn't it a logical assumption?

Mr. Fuller: Regardless of your assumption, I want to know the facts on which you base your statement.

Mr. Konigsberg: The Committee was informed in 1950 that I was prepared to study law in this application, and the information therein could have provided grounds for suspicion as to my moral character in 1950 as easily as in 1953.

Mr. Fuller: You have no basis in fact to testify that [fol. 175] these editorial statements were in the records of the Committee any time before?

Mr. Konigsberg: No.

Mr. Fuller: That is all I want to make clear. All you are saying is that we had that document in our file and if we had spent a great deal of time, or the time that we have spent at this time, we might have dug out this additional material.

Mr. Konigsberg: I am saying that whatever is grounds for suspicion existed in 1950. I have done nothing since then—I have been too busy studying law—which would add to the record.

Mr. Fuller: That is your assumption. You have no factual evidence to support that.

Mr. Konigsberg: That is a fact that in 1950 I submitted this application.

Mr. Fuller: I want to know the factual material which would indicate that this Committee knew at that time what it knows now.

Mr. Mosk: I think the only point is this: Mr. Konigsberg's point is that he submitted this application and he presumes that any matters that the Committee has now turned up raising questions as to his moral character were available at the time he submitted this application.

Mr. Fuller: I am willing to let the record stand on that basis.

[fol. 176] Mr. Vincent H. O'Donnell: What is the title of the application?

Mr. Konigsberg: The Committee have about the only title. It is the one on which every person who studies law or decides to study law must register.

Mr. Fuller: Mr. Konigsberg, what have you been doing with your time during the last year? What is your present employment?

Mr. Konigsberg: I am not employed, sir.

Mr. Fuller: What are you doing?

Mr. Konigsberg: I am hoping to get employed but I am unemployed now. My wife is employed, fortunately, and we are able to get along.

Mr. Fuller: What organizations do you presently belong to?

Mr. Mosk: To which I object on the grounds that this is a violation of the witness's rights under the First Amendment of the Constitution.

Mr. Fuller: You mean to say that he shouldn't tell us whether he belongs to the Elks or the Masons or things of that sort?

Mr. Mosk: That would be my position.

Mr. Fuller: We can't determine any organization he belongs to? He doesn't have to answer at all?

Mr. Mosk: That would be my position that his beliefs and associations are not within the scope of this hearing.

[fol. 177] Mr. Fuller: It does not necessarily relate to beliefs. We all know many organizations are not based on beliefs. I think we are entitled to know who he associates with.

Mr. Konigsberg: I respectfully say that you are not entitled to know my associations and any person may refuse to answer on the basis of the rights of a citizen under the First Amendment which I have previously referred to in my testimony.

Mr. Fuller: You testified before the Tenney Committee. I assume you have re-read your testimony.

Mr. Konigsberg: No, sir, I haven't re-read it. I had forgotten about it until Mr. Freston referred to it in the first

hearing. I don't recall what is in it. I have a general idea, yes.

Mr. Fuller: Do you have any reason to change your testimony, your position you took in that? Is that still your position, whatever you may have said at that time?

Mr. Konigsberg: I can't recall everything I said.

Mr. Mosk: May the witness re-read it?

Mr. Fuller: I would be glad to have him re-read it and tell me how he would change that testimony at this time, if he would change it, or anything he may have said at [fol. 178] that time. (Document was handed to witness)

Mr. Konigsberg: Do you wish me to read all of this?

Mr. Fuller: Yes, I think we can afford to take the time.

. . . Whereupon there was a recess while the witness read the document referred to . . .

Mr. Fuller: Everyone is present now. Are you ready to answer the question?

Mr. Konigsberg: Yes.

Mr. Fuller: Is there anything about that testimony that you wish to correct in view of the present circumstances?

Mr. Konigsberg: No, there is nothing I would correct. You mean the sense or the type of answer I would give?

Mr. Fuller: Yes, exactly.

Mr. Konigsberg: I might not give the answers, perhaps, in the same way, but I think the general import would be about the same.

Mr. Fuller: The position evidenced there would be your position at present?

Mr. Konigsberg: I think, generally speaking, yes.

Mr. Fuller: In some of these editorials written by you there is some language I would like to question about. In [fol. 179] the editorial entitled "Time for Courage" you make the following statement:

"We must also arm ourselves with the truth about the world's daily events. This will be found only in such publications as the California Eagle, People's World, National Guardian and the new negro monthly, "Freedom". And in the radio programs of an Averill Berman."

Is that a correct statement?

Mr. Konigsberg: You mean did I say that?

Mr. Fuller: First, yes.

Mr. Konigsberg: I presume I did if that is an accurate copy of the column I wrote.

Mr. Fuller: Is that still your position?

Mr. Konigsberg: How do you mean "still my position"?

Mr. Fuller: Is that still a true statement? Is that what you would testify to be a true statement?

Mr. Konigsberg: Well, the material I wrote there I wrote as a working newspaper man, Mr. Chairman. I think—when a person writes for any publication, I think there is involved a question of freedom of the press as well as freedom of speech which I have referred to before.

Mr. Fuller: In truth or falsity?

Mr. Konigsberg: Regardless of truth or falsity, it is a question of—having been a newspaper man, I think the material one writes for newspapers, or magazines or books [fol. 180] is clearly covered in the First Amendment as well as freedom of speech. I am stating that as my belief which I am willing to admit. If this is an accurate copy of the column I originally wrote (I don't recall the date) then I did say that. As to whether I still believe this or not, then I think you are venturing into the realm of belief again.

Mr. Fuller: You refuse to answer that question?

Mr. Konigsberg: I don't refuse to answer. I say that on the basis of my rights under the First Amendment I am not required to answer such a question.

Mr. Fuller: Then you are refusing to answer.

Mr. Konigsberg: I don't believe I am refusing to answer. If that is the Chairman's interpretation, that is his privilege.

Mr. Fuller: Is it your interpretation that newspaper men have the right to print false statements?

Mr. Konigsberg: No, I wouldn't say a newspaper man should knowingly print false statements. As a matter of fact I think he should, and I believe most newspaper men, or all newspaper men, have held to a high standard of veracity in everything they write.

Mr. Fuller: Was this a true statement at the time you wrote it?

[fol. 181] Mr. Konigsberg: If I wrote that, I must have believed that at the time.

Mr. Fuller: Do you believe it is a true statement at the present time?

Mr. Konigsberg: As I said, what I believe at the present time I think is included as to the extent of your inquiry into my beliefs.

Mr. Fuller: You refuse to answer?

Mr. Konigsberg: No, I don't refuse to answer. I believe that what I believe today has no bearing on my moral fitness to practice law.

Mr. Fuller: Now, in the editorial entitled "The American Revolution"—or at the end of the editorial entitled "If I Were President" there is a legend reading as follows:

"Free Lawson, Trumbo, Dennis, Fast or this year of freedom may be your last! Write the President."

What were those gentlemen incarcerated for at the time?

Mr. Konigsberg: Larson, Trumbo and who else?

Mr. Fuller: Dennis and Fast.

Mr. Konigsberg: Well, as I recall, Lawson and Trumbo of course were two of the Hollywood Ten who refused to testify or took the position again on the First Amendment, if I remember correctly, before the Un-American Commit-[fol. 182] tee of Congress, then they had been sentenced to jail for a year for contempt of Congress. I don't recall what Fast was.

Mr. Fuller: What was Dennis?

Mr. Konigsberg: That was also contempt as I recall, before the Un-American Committee. I think you are thinking of the United States vs. Dennis. That wasn't the case.

Mr. Fuller: I am not thinking of anything.

Mr. Konigsberg: This, as I recall it, was a contempt situation before the Un-American Committee of the House.

Mr. Fuller: Dennis was ultimately convicted of a crime?

Mr. Konigsberg: Later, I think.

Mr. Fuller: Is it your present position that Dennis should be freed from that conviction?

Mr. Konigsberg: Again you are venturing into the realm of belief, what I believe today. Anything I wrote, if it proves to be what I wrote, I wrote what I believed to be the truth at the time. I never wrote anything I didn't believe to be true. I think if you ask my opinion today that

is another matter. You are not asking something about what I did as a matter of public record.

Mr. Fuller: Is it your position the Committee isn't entitled to determine whether or not an opinion or an attitude [fol. 183] or an action which you may have done in the past—that these things may not be a subject of inquiry to determine whether or not they still continue?

Mr. Konigsberg: I don't follow that.

Mr. Mosk: May I interpose an objection? I think that the questions which you are asking with relation to the present beliefs of the applicant are improper questions under the authority of the Committee and the laws of the United States. The standards set for good moral character as determined by the courts of this state have never included as a basis for determination that a person is not of good moral character by reason of any beliefs he might have, certainly not any beliefs in the political realm.

Every case recorded in the State of California has been a case involving a commission of some crime by the applicant or by the attorney, and it is, I think, Mr. Konigsberg's position that making an inquiry into this realm, you are going beyond the scope of the authority of the Committee and beyond the law as has been determined by the Supreme Court in past cases.

Mr. Fuller: I think we understand your position. I think you should know that quite possibly the Committee doesn't agree with that. I believe that once having taken a position on a matter publicly he may have waived his privilege (if he had any) and we are entitled to know whether or not [fol. 184] that condition continues. I won't argue the matter with you now, but I want you to understand that we understand your position and we want to state our position, at least in a way.

Mr. Mosk: May I comment briefly on that? There is a great distinction between a statement which may have been made in a newspaper, which is a matter of record, of course, but I think that even assuming that this is the case, that it is a matter of record and does come into the record, it is our position that this cannot be a basis. Even these statements which are statements of belief cannot be a basis

upon which determination of the fitness within the realm of moral character can be determined.

Mr. Konigsberg: May I ask this question, Mr. Chairman: Is it the Committee's position (and I would sincerely like to know) that it has the power to ask such a question and that questions relating to opinions do have a bearing on the applicant's moral character?

Mr. Fuller: I don't want to put it on that basis. It is my position, not necessarily the entire Committee's position, that we have a rather general scope of inquiry to determine whether an applicant tells the truth, for one thing. I think that is a factor in determining whether or not he is morally qualified. He may state that he is not now a Communist, if he has been a Communist in the past, and if we believe he [fol. 185] is telling the truth, that will have a bearing on our determination. I think we have the right to test the veracity of the applicant to the extent that if he denies that, I am influenced in the final conclusion I will come to, that I haven't determined yet. I do think that the applicant who wishes to afford us the facilities for determining his moral character to the utmost, should permit us to test his veracity.

Mr. Konigsberg: Mr. Chairman, in all sincerity I have attempted to show in my initial analysis that under Section 6064.1, that I think sets the limit to any inquiry that any body of Examiners has. Once you ask "Do you now?", does that person advocate the overthrow by force, violence, or other unconstitutional means, and he answers, as I have answered, that he does not, you cannot ask any questions about his opinions. You are not empowered to ask any questions. There is some question as I pointed out in my statement whether this is constitutional even to allow it to this extent.

Mr. Fuller: Do I understand that it is your position, and I think I understand your position, that we should not go ahead and find out whatever information we can obtain in order to make the best decision?

Mr. Konigsberg: I make this point which I did not make before that I don't think constitutional such action, to [fol. 186] draw inferences of the truth or falsity of any statements based on the position (whether of the First or any other Amendment) which the applicant takes. For the

Bar to maintain the position, as the Chairman is doing, that it does have the right to ask about my opinions (at least as he is doing this afternoon), as I pointed out these opinions and beliefs which have been expressed coincide with those of prominent leaders of the Bar, which they are expressing today, and the ultimate logic of such a position, then, would be that Dean Griswold and Justices Douglas and Black could not practice law in the state of California. I am wondering if that is the position the Committee wishes to take.

Mr. Fuller: There is no position of the Committee. I am only one member. We are conducting an impartial examination.

To return to the editorial entitled "Court of Last Resort" dated May 11, 1950, there is this language:

"When the Supreme Court of these beknighted states can refuse to review the case of the Hollywood Ten thus making that high tribunal an integral part of the cold war machine directed against the American people—then the enemies of democracy have indeed won a major victory. When the commanders of the last legal bulwark of our liberties sell out to the enemy, then the fascists have gone far, much farther than most people think.

[fol. 187] "He who cannot see the dangerous, damnable parallel to what happened in Germany is willfully blind."

You made that statement?

Mr. Konigsberg: If that is a correct copy of what I wrote, I made the statement at that time, yes.

Mr. Fuller: And would you make that same statement today?

Mr. Konigsberg: Again I give you the answer that because of the guarantees of the freedom of speech, the freedom of the press, under the First Amendment, the Committee is not empowered to inquire into what I think or say today.

Mr. Fuller: Have you any evidence to support your statement that the Supreme Court sold out to the enemy?

Mr. Konigsberg: I think I covered that in what I said in answer to your previous question.

Mr. Fuller: I don't believe it is any evidence to support that statement.

Mr. Konigsberg: Are you asking me if I have any evidence now?

Mr. Fuller: Did you have any evidence then?

Mr. Konigsberg: I think the same answer applies.

Mr. Fuller: What is the answer?

Mr. Konigsberg: The Committee is not empowered to ask me questions relating to what I thought or the opinions I expressed.

[fol. 188] Mr. Fuller: This is a statement of fact. You made a statement of fact. You had something to base that on?

Mr. Konigsberg: What I had then, or what I knew then or had then I am not in a position to recall. Whether I believe it now, I think my previous answer applies. Is the Committee suggesting that any criticisms of any governmental institutions makes one morally unfit to practice law?

Mr. Fuller: I am suggesting this personally, that anyone who is to become an officer of the Court should not, without very good evidence, accuse the judiciary, particularly the Supreme Court of the United States of being subject to bribes and treachery and selling out.

Mr. Konigsberg: Mr. Chairman, the Supreme Court as well as other courts have been accused in many publications.

Mr. Fuller: Your are speaking of the entire Supreme Court, you are not talking about any individual, but the institution as such?

Mr. Konigsberg: I am referring to the Supreme Court.

Mr. Fuller: Do you believe that it is possible for the present Supreme Court to sell out?

Mr. Konigsberg: What I think was answered by my [fol. 189] previous answer to the question, when I answered the Committee that legal scholars about the country are making comments similar to this.

Mr. Fuller: They disagree with the results. Can you quote any others to me who accused the court of selling out or being subject to bribery?

Mr. Konigsberg: I don't know whether that is a fair inference of what I said.

Mr. Fuller: What inference should we draw?

Mr. Konigsberg: I don't know. You may draw whatever inference you feel competent to do.

Mr. Fuller: That is what I thought.

A lady by the name of Bennett testified here. You heard her testimony. Is there any part of that testimony you wish to deny?

Mr. Konigsberg: Well, again, Mr. Chairman, that is the same question. That is a question relating to opinions, beliefs, political affiliations.

Mr. Fuller: It has nothing to do with beliefs.

Mr. Konigsberg: It certainly is related to political organizations, political activity, however you choose to describe it.

Mr. Fuller: Do you want to read it again?

Mr. Konigsberg: I recall it.

Mr. Fuller: Do you wish to deny any part?

[fol. 190] Mr. Konigsberg: I wish to say that any questions relating to such political affiliation, which the testimony dealt with. . .

Mr. Fuller: You refuse to affirm or deny her testimony?

Mr. Konigsberg: The Committee is not empowered to ask with regard to political affiliations or that type . . .

Mr. Fuller: I am calling your attention to the fact part of it is not connected with political beliefs or associations.

Mr. Konigsberg: Which part? . .

Mr. Fuller: You are free to read it.

Mr. Konigsberg: If you wish, I shall be glad to.

Mr. Fuller: If you want you may either affirm or deny anything if you need to do that. We want to afford you the privilege. (Witness read the testimony referred to).

Mr. Konigsberg: Mr. Chairman, I think I would recall all the questions relating to me. She answered a number of questions not relating to me. All relating to me are based on a matter of political affiliation or opinion and political association and I think that is amply covered under the protection of the First Amendment as I referred to a moment ago. The Committee's rights to inquire about this matter are limited to one, the present personal advo-[fol. 191] cacy of the overthrow by force or violence or other means as set forth in 6064.1.

Mr. Fuller: If you were called on to bear arms against

a communist country on behalf of the United States would you do so?

Mr. Konigsberg: I think that question, too, is covered under the guarantees mentioned a moment ago. I would say, certainly, if my country called me to arms; as I enlisted before, I would certainly serve in the armed forces.

Mr. Fuller: Regardless of the enemy?

Mr. Konigsberg: Regardless of the enemy.

Mr. Fuller: That is all for the moment. Does some member of the Committee have any questions?

Mr. O'Donnell: Are you a member of the Communist party now?

Mr. Konigsberg: How does that differ from the questions asked before?

Mr. O'Donnell: I would just like you to answer it.

Mr. Konigsberg: The answer is the same I would give. The Committee is not empowered to inquire any more than they may inquire whether I am an Elk, a Freemason, a Democrat or a Republican. It might become incriminating to be a member of the Democratic party today, like saying all Democrats are traitors.

[fol. 192] Mr. O'Donnell: Have you ever been a member?

Mr. Konigsberg: I would give the same answer.

Mr. O'Donnell: You refuse to say whether you now are?

Mr. Konigsberg: I refuse on the ground that the Committee is not empowered to question anyone about political opinions or affiliations, whether past affiliations or present ones. I say this can have no bearing on moral qualifications to practice law, unless the Committee is prepared, as I said in my statement, to take the position that it is now a crime in California to have opinions different than general popular opinions or conforming opinions.

Mr. Fuller: Of course, the Committee takes the position it is doing so affirmatively, when it goes before the Supreme Court and states you have the proper moral character and we feel we have the right to inquire very deeply into that because it is an affirmative obligation on our part.

Mr. Konigsberg: I think, Mr. Chairman, on that point the court has said—

Mr. Fuller: We may be wrong. The Supreme Court may tell us otherwise but that is the way it appears at the moment.

Mr. Konigsberg: I think in taking such a position the Committee is, as I have said clearly I think, doing what I [fol. 193] consider to be an unconstitutional, wrong or illegal act—not criminal. I mean the constitution doesn't permit such conduct on the part of public bodies, or if I may express it this way, the Committee's stand with me. In any defense that is constitutional rights as applied to everyone.

The other day in the Legal Journal there appeared a clipping—

Mr. Whitmore: What paper?

Mr. Konigsberg: The Los Angeles Daily Journal, I should say, of February 25, 1954. I meant to refer to this when I was reading before. This is a commendable service that the State Bar is publishing under Legal Problems of the Profession. This relates to various constitutional privileges—you may see it, if you wish, Mr. Chairman—and the lawyers are attempting to inform the public (potential clients, I presume) and providing a source which they may rely on. Several days before that, Mr. Jameson, president of the American Bar Association, the national president, made the statement that—one sentence is apropos on this point.

In the Los Angeles Daily Journal of January 22, 1954, the President of the American Bar Association, Mr. Jameson, said "We recognize that all lawyers as citizens retain all constitutional rights, including the right to refuse to testify if their testimony might tend to incriminate them. [fol. 194] Asserting that right discloses difficulties for the practice of law."

I am not invoking—nor have I at any of these hearings—the Fifth Amendment. The point I am making is that it is inconsistent for the President of the Bar Association to make this statement when the local Bar comes out with a commendable public relations effort to educate the people to their rights under the constitution in direct contradiction.

I don't think you can deny the position taken by the State Bar in this article and similar articles and by the National Bar. They say, "Sure, you have the right, but if you invoke the right you won't make a living." This has profound implications in any democratic society. This is what the

totalitarians did. They said, "Sure, do it, but if you do we will deny you a living."

I think this is wrong. Isn't it contradictory to tell a citizen "You have the right" but he will lose his livelihood and his life practically speaking.

Mr. Fuller: You made the statement you have nowhere in these proceedings invoked the Fifth Amendment.

Mr. Konigsberg: That is right.

Mr. Fuller: You have been consistently invoking the First Amendment.

Mr. Mosk: May I for the record note that the witness was [fol. 195] referring to the Los Angeles Daily Journal of February 25, 1954, an article entitled "Law in Action" and at the bottom it says "The State Bar of California offers this column for your information so that you may know more about how to act under our laws."

The following two paragraphs appear in that article:

"In a trial the judge decides what evidence can be heard. He applies the rules of evidence so that truth, relevant truth, may come out in court to decide guilt or innocence, liability or not."

And a later paragraph:

"The court cannot make you testify against yourself. This is written into our Bill of Rights as a protection against tyrants and torture."

Those are quotations from the Exhibit to which the witness referred and was reading from.

Mr. William M. Maxfield: Are you offering to put the whole article in?

Mr. Mosk: Yes, we will offer it. (The document was then handed to the Chairman)

Mr. Konigsberg: I would appreciate it very much if I might have a minute to comment on something. I did not include this in the original presentation so it wouldn't be too long but it is very much the thing you are saying now —three paragraphs.

In my original outline which I was going to offer I en- [fol. 196] titled this "Duty of Bar Examiners" and I think that is what we are considering although it may be my misconception.

In discharging the duty of determining the applicant's moral character, the Committee of Bar Examiners has the

correlative duty of upholding the applicant's constitutional rights. Justice Jackson has said (36 ABA Journal 607) that lawyers are "the chief instrument by which society applies its laws and its sanctions to the individual"; and further, they serve under a "guardianship of our traditional liberties and our legal institutions".

President Eisenhower recently observed that "the role of the lawyer in the daily life of our nation and communities is vital to our democracy" and that "the lawyer is the guardian of individual liberties granted under our Constitution and their defense is one of the main objectives of the American Bar Association." (Quoted by William J. Jameson in the Los Angeles Daily Journal 1/22/54)

If this is so, and I believe it is so, it seems to me that the role of the lawyer today in America in what I think you will all admit is a very critical period for our democratic society, is a profound one for good or bad and I don't think I have to elaborately document this point, but I quote this one: Justice Douglas expressed the opinion that "There has probably not been a period of greater intoler- [fol. 197] ance than we witness today. The Communist threat inside the country has been magnified and exalted far beyond its realities. Fear runs rampant." This is from the New York Times Magazine of February 13, 1952.

It seems to me the very disturbed situation in which our country exists today offers a really great opportunity for the legal profession to help in defending our democratic rights, and one way we can do this is for a group of lawyers to do it, such as a Committee of Bar Examiners who certainly, when they were admitted to the Bar, swore to uphold the constitution and to refrain from actions which might be considered unconstitutional.

I think it is general knowledge that the legal profession really had its beginnings in the centuries old struggle for preservation of human rights. Much of the progress in those centuries has been due to the efforts of lawyers, advocates and barristers down through the years.

This central issue of our time, whether the democratic society shall survive, is in a sense focused in cases such as this. This is where democracy is defended, in little hearings, in meetings, in conversations, not on the greater stage of Congress or the state legislative body.

How those rights are developed and enhanced in the courtroom or the hearing room is the front line of defense [fol. 198] of democratic rights and lawyers play the key role. This Committee in this instance and in similar instances is playing the key role. What it does or fails to do will contribute to the undermining of democratic rights or upholding them.

Mr. O'Donnell: Do you think we as Bar Examiners would be upholding that obligation if we certified a member of the Communist party to the Supreme Court for admission?

Mr. Konigsberg: Again I think my answer would be similar to the way in which I answered before, that is in the realm of ideas, opinions and such and has no bearing on the moral qualifications to practice law.

Mr. Fuller: You give a great deal of time to expressing your opinions on a great many subjects. Right now you take one side of the dilemma, yet when you are asked a question on the other side of the dilemma, you never answer.

Mr. Konigsberg: I don't think you can say I have taken that position all through—the transcript of all the hearings will show these opinions have no bearing on my moral qualifications to practice law. On the major premise I have answered directly. You said a moment ago that I was giving answers based on my constitutional guarantees. There is no contradiction on this point. I am not expressing opinions here, I am analyzing in effect and in form my own [fol. 199] views why I think the action of the Subcommittee of Bar Examiners was correct or incorrect.

This is what I am called upon to do in making an appeal for reversal. I am not offering opinions which have no bearing on the issue. Certainly where it bears on for what reasons I think the action correct or incorrect, I am compelled to take this position. Again, in answer directly to the point you are making, my conception of my duties as a citizen, whether in regard to applying for bar membership or anything else, tells me that I can't join any action I consider unconstitutional or undemocratic, call it what you will. I think you are not empowered to inquire into a man's beliefs any more than you can ask whether he is a Christian Scientist or a Seventh Day Adventist or Jewish

or anything else. It has no bearing on his qualifications to practice law.

The Committee has established these qualifications in its questions when you register and when you have passed a law school examination in other questions dealing with moral character relating to acts of a criminal nature, not academic points. Unless every case in California—not every case, but I have searched the total record involving disbarment or suspension from the bar, and if it isn't based on an act of a criminal nature or moral turpitude there is no action against me, no legally recognizable grounds against me, no justifiable grounds unless the Committee [fol. 200] is prepared to say that having opinions different than those which the Committee approves is reason for calling a person immoral. Once you do that it is inevitable that the next step denies persons admission to the bar for unpopular beliefs, then proceeds to the disbarment of those who have such opinions, then proceeds to deny counsel to others of similar opinions. This is the inevitable trend. It is happening in other parts of the country, I am not guessing, others have been disbarred for similar reasons. In doing their duty under the law as it is, I think the action of the Subcommittee was wrong. I don't say it was done purposely, it is their interpretation of their powers under the law, but as it exists today that is simply that you are empowered to ask do I, personally, advocate the overthrow by force or violence or other unconstitutional means and at the time I say "No" you can't ask any further political questions.

Mr. Fuller: I don't think you should go away with any conception that the Committee agrees with your contention that it is limited by the scope of the questions in the application. That is the starting point as far as the Committee is concerned. We couldn't put all the questions in this which might occur in a given situation.

I don't want you to be misled on that or go away thinking that the fact that four or five cases
[fol. 201] have gone to the Supreme Court in given situations precludes other situations from arising. That could be a happenstance.

Mr. Konigsberg: There are a dozen cases in California alone, not four or five.

Mr. Fuller: I do not feel limited in case a new situation arises which comes within the scope of the inquiry. It is just an accident that the field happens to have limited itself to the cases which are now reported. A new case could come up tomorrow.

Mr. Mosk: If I may say this, in the brief I submitted to the Subcommittee, I believed I cited an Idaho case which I felt was the only one which even approached the present situation, in which, it must have been the Idaho Supreme Court as I recall reversed a determination by the Committee refusing admittance, or perhaps it was disbarring for membership in the I.W.W. at the conclusion of the first world war.

I think, if I may say this word in summary with relation to the issue we have here, I think I expressed it pretty much at the last hearing. It is all in the record but I do feel that the basic issue this Committee is faced with is to determine for itself whether it is prepared to say that it may make a determination of moral fitness on the basis of the beliefs or opinions of the applicant and I think that the question [fol. 202] resolves itself to this fundamental question, because as soon as you start making gradations within beliefs—that this belief is satisfactory, this belief is not—I say then that the Committee of Bar Examiners must be setting itself up as the judge of what beliefs are correct and what beliefs are incorrect.

No matter how you twist it or turn it, in approaching the Konigsberg case this is the fundamental issue that must be decided, whether a man's beliefs must be a basis for determining a good moral character.

I think this is a fortunate case to be before the Committee because they are dealing with a mature man who commenced the study of law at the age of thirty-nine so he already had a full record of community activity behind him and he was in a position to present before this Committee affirmative evidence of good moral character, something I suspect is most difficult with the average twenty-one or twenty-two year old applicant who has had no activity in the community.

Here we have attempted to approach this case, at least

from the point where I began consulting in regard to it, from that point of view and we are prepared to make to this Committee an affirmative showing of good moral character. I think we have done that with the list of letters and the caliber and quality of the people who came before this Committee in effect through their letters and we were privileged to [fol. 203] bring many of these people before the Committee but it was felt that the time consumed by bringing thirty-six or more persons before the Committee would work an undue hardship on everyone concerned.

Here we have an affirmative showing of thirty-six persons scattered throughout his adult life and we consciously did this; we picked people who knew him in the early period, the middle period and who knew him now. All of these people have spoken in the most glowing terms of his good moral character and their belief that he would make, by reason of his moral character, a good attorney.

So, I submit that under these circumstances the issues must be faced squarely by this Committee in making its determination. Are you prepared to say that by reason of a person's opinions, beliefs and associations he may be determined of bad moral character and a person you cannot certify to the Supreme Court?

Mr. Whitmore: It is not your contention, is it, Mr. Konigsberg, that the only basis which the Committee may rely on in determining whether or not it can certify you under the provisions of 6064.1 is by asking you the questions and getting a yes or no answer. It is not your position that that is the extent of the right of this body in making its determination under 6064.1?

Mr. Konigsberg: In essence, that is it. My interpretation [fol. 204] of that code section is simply that it sets the limit as to whatever questions relating to opinion—because that is obviously a political issue—there may be asked by the Bar Examiners. It sets the limit as I interpret it. I may be wrong, as I think the Subcommittee is wrong; because of the history of this act as I have related it the Committee can only ask "Do you now personally advocate the overthrow of the government of the United States or of this State by force or violence or other unconstitutional means" and if I say "No", "Yes" or whatever it may be, that is

as far as you can go; that is without raising the question on this point (which I don't think is pertinent) as to whether that is even constitutional under the First Amendment.

Mr. Whitmore: You are saying that the Committee is precluded under Section 6064.1 from considering acts or omissions of yours in the past with respect to that problem?

Mr. Konigsberg: Yes, I think so. I am saying they can only ask do I advocate the overthrow by force or violence or other means.

Mr. Whitmore: You are contending that we are bound by your answer of yes or no which you give.

Mr. Konigsberg: You can decide for yourselves whether I am telling the truth. You can use any means of determining the truth. You don't have to accept any individual's [fol. 205] yes or no answer as the truth. I think that is understood.

Mr. Maxfield: Doesn't your answer right there defeat the only purpose if we can cross examine as to the truth or falseness of that statement? Why can't——

Mr. Konigsberg: I didn't say you could cross examine me as to the truthfulness. The question as I understand it was whether the Committee couldn't consider other things, records, past acts.

Mr. Whitmore: Acts or omissions.

Mr. Konigsberg: Anything in my record to evaluate whether I am telling the truth, certainly.

Mr. Maxfield: The general principles of cross examination testing the veracity of a statement, those you know under the rules of evidence are pretty broad. Do you deny us the right to ask these questions for that purpose?

Mr. Konigsberg: Again under the rules of evidence there might be many items of hearsay, fact or whatever it might be, which the court would like to know but the court prevents the prosecution or the other side from introducing because of a deep-seated public policy or other evidentiary rule or the First Amendment. The rule of search and seizure is something else of that nature. The information might be pertinent but the court says that the results of such act, as established over the years, may not be asked or introduced.

[fol. 206] It is my contention as I tried to make clear—(it might be unconstitutional, I am not questioning that now)

—it may only go as far as this law permits you to go. The history of that act shows that the Legislature tried to do other things but failed to because it failed of passage. And a person can be asked (such people as myself) "Do you?" than the Committee must determine and evaluate as to the truth by what is in the individual's record.

Mr. Maxfield: We are not entitled to an evaluation of that truth or in an effort to evaluate it to cross examine you with respect to present or past associations?

Mr. Konigsberg: That is right. That is my interpretation.

Mr. Arthur E. Freston: May I ask a question, Mr. Konigsberg? As I have listened at these various hearings and you have emphasized that we may not inquire into your beliefs, frankly, I am confused because when you were asked the question if you were a philosophical Communist as I recall it you had no hesitancy in categorically answering the question "no".

Mr. Konigsberg: That is right. I corrected that at the following hearing. I said I was under tension and didn't realize this was the same type of question. I shouldn't have answered the question Mr. Black asked. If I were asked again I would give the answer based on the First Amend-[fol. 207] ment. You appreciate very well that under these circumstances an individual doesn't think clearly and accurately. I gave the wrong answer to that question. Based on the position I have taken all the way through it was error for me to answer that question. I corrected it at the next hearing.

Mr. Freston: Now, I understand, if I am right, if I have understood you correctly, that you have stated a number of times here this afternoon that you have found no case in California which would go to support——

Mr. Konigsberg: In which I found, other than those in which some act of criminal nature or moral turpitude was the basis of the action of the State Bar Examiners or the court, there was refusal to admit, or disbarment or suspension. I found no such case.

Mr. Freston: Have you read the Federal case of Orloff 87 Law Edition related to the efforts of a doctor to obtain a commission in the United States Army? He had refused

to answer the question "Are you or have you ever been a member of the Communist party?"

Mr. Konigsberg: No, I didn't read that case, when I researched the cases I didn't come across it.

Mr. Fuller: Communism may not have been as important in those days as now. This case deals with this general question. You are invited to read it and if, after reading it you have anything you wish to do about changing your testimony we will give you an opportunity [fol. 208] to do so.

Mr. Freston: I am sure I understand you then. You were differentiating merely the field of your research when you were careful to phrase it that you found no case in California, you were restricting your answer to only the field of authorities you searched, namely, the State of California.

Mr. Konigsberg: Yes, California.

Mr. Fuller: Unless someone else has something——

Mr. O'Donnell: There was some suggestion that the Subcommittee was not fair at the previous hearings.

Mr. Mosk: May I interrupt immediately. There was no inference in any comments made by Mr. Konigsberg or myself. They were solely directed to the decision of the Subcommittee and our disagreement with the ultimate results. The Committee was absolutely fair and treated Mr. Konigsberg and myself with the utmost degree of fairness and impartiality. We have no complaints about the Subcommittee.

Mr. O'Donnell: You received copies of the transcript, one for the September 25th hearing, and another for December 9, 1953, and then a third one for January 27, 1954?

Mr. Konigsberg: We received copies.

Mr. Mosk: We received copies of all the transcripts and the fullest cooperation. We have no complaint whatever, only with the decision.

[fol. 209] Mr. O'Donnell: On the first hearing there were only two members of the Committee as it is now constituted.

Mr. Whitmore: Four were present, two participated.

Mr. O'Donnell: And as I understand it, you are willing to submit this application for admission on the basis of the transcripts in the three prior hearings and on the basis

of the present hearing to the Committee as it is now constituted?

Mr. Whitmore: Together with the Exhibits introduced today.

Mr. Mosk: Yes.

Mr. O'Donnell: I don't know if it is necessary for the record but perhaps we should identify with greater certainty the application form that Mr. Konigsberg referred to, his first application. He handed the application to me to look at and I intended to follow up by stating it was an application dated——

Mr. Fuller: We have the date in the record.

Mr. O'Donnell: —December 4, 1950 his application is dated and it was filed with the Committee on December 5, 1950.

Mr. Fuller: It is now marked Committee's Exhibit No. 4. This is the originating application for his law study.

[fol. 210] Mr. O'Donnell: Do you feel you have had a complete hearing? Is there anything more you would like to say?

Mr. Konigsberg: Yes, I think so.

Mr. Mosk: Yes, I think the Committee has been most fair, courteous and patient with the presentation. We hope, however, and submit that the decision of the Subcommittee should be reversed and Mr. Konigsberg should be certified for admission to the Bar.

Mr. O'Donnell: Do you wish to file any more authorities or any further Memorandum, Mr. Mosk? We have the one you submitted at the January 27th hearing.

Mr. Mosk: May I call the office on Monday and give an answer to that question? My present inclination is not, but I might like perhaps——

Mr. Fuller: You will be given all the time you need to file anything you want.

Mr. Mosk: My present inclination is that we have said everything we should have said.

Mr. O'Donnell: I think the Respondent and the Chairman at the same time should examine this Orloff case.

Mr. Fuller: And give your comments on that. (To Mr. Mosk)

Mr. Wright: I would be interested as I indicated to Mr.

Mosk at one of the earlier hearings. This is not the first time the Orloff case has been mentioned.

[fol. 211] Mr. Konigsberg: In this procedure it is.

Mr. Mosk: I think I recollect——

Mr. Wright: I may be in error.

Mr. Konigsberg: You may have been thinking about it and didn't mention it.

Mr. Mosk: I will be glad to comment on it and submit a Memorandum. I am familiar with it generally but I would want to re-read it before I comment on it.

Mr. Fuller: I think there is an article by Chaffee or something on this subject too, which you might look at.

Mr. Konigsberg: A recent article?

Mr. Fuller: It was put out here—I saw it somewhere—by Chaffee on this subject of lawyers. I can't identify it at the moment, but I have seen it.

Mr. Mosk: I will be glad to submit a further Memorandum, I think perhaps one day next week.

Mr. Fuller: We would like to have all the guidance you want to give us.

Mr. Mosk: Thank you very much.

Mr. Fuller: The matter will stand submitted subject to Mr. Mosk's right to send in anything he wants and if you have anything else you can send it in. The matter will be re-opened if necessary.

Mr. Mosk: I have a client who obviously speaks well for himself which is always a pleasure.

... Whereupon the witness was excused ...

[fols. 212-213] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 214] EXHIBIT "C" TO PETITION

The Committee of Bar Examiners
Of The State Bar of California

February 8, 1954

Registered Mail

To: Raphael Konigsberg
2446 Echo Park Avenue
Los Angeles 26, California

and

Edward Mosk, Esq., his Attorney
6305 Yucca Street, Room 254
Hollywood 28, California.

The Southern Subcommittee of the Committee of Bar Examiners has reviewed the record in the matter of your application for certification to the Supreme Court of this State for admission to practice law. As a general applicant you are required, among other things, to meet the requirements of Section 6060(c) of the Business and Professions Code and the Rules Regulating Admission to Practice law in California, before this Committee can take the affirmative step of certifying you to the Supreme Court as being possessed of good moral character.

You were orally examined on September 25 and December 9, 1953, and you and your counsel appeared before the Southern Subcommittee on January 27, 1954. Newspaper articles, letters, and other documentary evidence were introduced.

It is the opinion of the Southern Subcommittee that the record in this proceeding does not warrant that it certify to the Supreme Court that you are possessed of the good moral character required.

Your application is denied.

You are entitled, in accordance with Section 5 of the Rules Regulating Admission to Practice Law in California, copy of which is enclosed, to have your application reviewed and determined by the Committee, upon filing, within ten (10)

[fols. 215-216] days after notification of the Subcommittee's action, a written application therefor.

For the Committee of Bar Examiners:

/s/ Alma Stayton
Alma Stayton,
Assistant Secretary

Enclosure. See page 335 for "Answer of Respondents to Petition to Review, Under Rule 59 (b), Rules on Appeal, Denial of Application for Certification to the Supreme Court for Admission to Practice Law."

[fol. 217] IN THE SUPREME COURT OF THE SATE OF CALIFORNIA

IN BANK

KONIGSBERG

v.

STATE BAR OF CALIFORNIA

ORDER DENYING PETITION FOR WRIT OF REVIEW—
Filed April 20, 1955

Petition for writ of review denied.

Gibson, C. J., Carter, J. and Traynor, J. are of the opinion the writ should issue.

(File endorsement omitted.)

Gibson, Chief Justice.

[fol. 217a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 217b] Supreme Court of the United States

Order Allowing Certiorari. Filed May 21, 1956

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

In addition to the merits, counsel are invited to consider,

in their briefs and upon oral argument, the following questions relating to the jurisdiction of this Court:

(1) Were petitioner's claims under the United States Constitution duly raised before the Supreme Court of California?

(2) Was the Supreme Court of California's denial of a petition for a writ of review merely a refusal by that court to exercise its discretionary jurisdiction or is it to be deemed a disposition, "in the nature of a review," Salot v. State Bar, 3 Cal. 2d 615, 617, and as such a final judgment within the meaning of 28 U.S.C. § 1257?

(3) Assuming the latter, was the determination of the Supreme Court of California based upon a rejection of claims arising under the Fourteenth Amendment of the Constitution of the United States, and more particularly, upon an evaluation of the constitutional significance of the evidence summarized under "1" on page 5 through the top of page 8 of the brief filed by the respondents on December 8, 1955 in opposition to the petition for the writ of certiorari herein?

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

May 21, 1956

Committee's Exhibit No. 1 consists of the following articles written by Raphael Konigsberg during 1950-1951 and published in the California Eagle.

[fol. 218] COMMITTEE'S EXHIBIT No. 1

AS FREE AS MONEY— November 30, 1950

One of the great writers of our time, Anatole France—in discussing the claim that equality of opportunity existed for all in French society—declared: "Yes, the rich and the poor have an equal privilege to sleep under the bridge."

The same verdict can be rendered on the claim to free elections in America today, and always. The rich and the poor have the privilege of putting forward their candidates and of campaigning for them, but—in practice the

money power of the nation has subverted the political freedom and the goals of democratic elections.

The corporations monopolize the elections, and legislatures, as effectively as they do the nation's economic life. There are free elections in our country to about the same degree that there is free enterprise. There can be no free competition where one side is so powerful that it can prevent the other side from competing.

The truth and wisdom of FDR's conclusion on the relation of monopoly to political power is borne out tragically by his country's fate since his death. Remember how he warned us that if we allow economic monopoly to become so powerful that it controls the nation's political life we will have fascism?

What we are discussing at this point is equality of opportunity in the operation of the election machinery—in the practical political job of selecting and electing candidates—and not the freedom of individuals to vote. In that sense, there are no free elections in the U.S.—since you simply can't conduct an effective campaign if you don't have large sums of money. The people and their representatives just don't have that kind of money.

But the unavailability of campaign funds for the people's representatives is only one part of the problem. The other is that by their control of the country's press, radio, lecture halls, et cetera, the money power (the nation's enemy) prevents the democratic forces from getting their message to the people.

The Golden Curtain

Talk about an Iron curtain! The Republican-Democratic control of the nation's gold is really an impenetrable curtain shutting off the vast majority of voters from knowledge of the facts of political and economic life in America.

The economic royalists not only have all the money they need for newspaper space and radio time—but they control these media—their owners are part and parcel of the money power—and refuse to sell space and time to the people's candidates when we are able to scrape a few dollars together.

This is what they call equality of opportunity in the land of free enterprise! Tie your opponent's arms—put

weights on his feet—blind him and you're sure to win. That's the corporations' idea of a fair fight. From their point of view, though, they're right—that's the only way they can win.

Only by keeping the people from having a fair chance to win can they retain power. If the people had a fair chance, if there really existed free elections, the anti-democratic gang would not control our economic or political life. And they know and fear it.

That is why even their practically complete control of the press and radio and their kept candidates doesn't give them sufficient security. They must also resort to poisoning the minds of the people, make them afraid to exercise a free vote, condition them to support their own enemy's candidates and programs.

That is the real reason for the disloyal oath hysteria, the red-baiting and witch-hunting. As Carey McWilliams so ably describes it in his latest book, "Witch Hunt," the rulers of America are trying "to create the dream of every politician and demagogue—a political audience made up entirely of those with conditioned reflexes."

In this respect, too, then, there are no free elections in our land. But this very desperation of the enemy, this compelling necessity to buy elections and men's minds, is glaring proof of his weakness, not of his power. He is afraid of an enlightened electorate. And well he might be. Such an electorate—which all the decent men and women in America are helping to create—will be his undoing and the nation's salvation.

[fol. 219] TIME FOR COURAGE – February 2, 195

Part III

In previous articles we have emphasized that opposition to tyranny has always been the greater loyalty in every nation—and that today this means that we who want to save American democracy, and improve it, must fight against the advances of fascism.

How then, are we to fight—we, the average citizens, the parents, workers, artists of America? What specifically can we do?

It is doubtful that anyone can furnish a complete and

detailed blueprint which will be the perfect guide for each responsible citizen. And the best that can be done in a discussion such as this is to offer some general suggestions—which each person can adapt to his own interests and capacities.

To begin with, there is much we can learn from our country's true history, and that of other countries—particularly the fact that in this nation, as elsewhere, it is the common people who have been the source of its power and riches. (This will be a source of pride and strength for us.) We should read such books as Shirley Graham's biography of Frederick Douglas, Howard Fast's historical novels, John Howard Lawson's "The Hidden Heritage."

We must also arm ourselves with the truth about the world's daily events. This will be found only in such publications as the California Eagle, Peoples' World, National Guardian, and the new Negro monthly, "Freedom." And in the radio programs of an Averill Berman.

Reading and study are very important, but we can't devote all our time to it. There's much urgent work to be done . . . the neverending tasks of making democracy work.

Work to Be Done

Whatever our personal inclinations and skills may be, long experience has proved that the most effective way for any citizen to discharge his duties is to do so in an organized manner, joining his strength and time to that of his neighbors. In this way we all obtain the greatest returns from our investment.

Today this means participating in the work of those organizations fighting for such democratic programs as FEPC and peace . . . organizations like the NAACP, the Independent Progressive Party, the Civil Rights Congress.

True, many of us are not organizationally-minded. In that case, we can make important contributions to the common struggle by such activities as:

Writing the President and our Congressmen every time an important issue develops—like the fight to free the Lt. Gilberts, the Hollywood Ten, or to pass FEPC, or abolish Jimcro, or bring our troops home from Korea—

Joining delegations to the city council to protest police

brutality, or fight for public housing, or to oppose universal military training—

Attending such meetings as those at which Charlotta Bass and Jackie Clack reported on the World Peace Congresses—from which we can get hope and courage—

Sending a spare quarter or dollar to such groups as the Civil Rights Congress which, in fighting for the lives of the Willie McGees and Martinsville Seven, is fighting for our lives.

Talking with our neighbors about the problems that disturb us—and urging them to demand rent control and reductions in the criminally high cost of living. Ask them, too, if they wouldn't rather form a peace committee now than mourn a slaughtered son?

Whatever form our contribution takes is a matter for each person and his conscience. There is, however, a basic philosophy, a foundation, on which we must all build our lives today:

1. Every American has a personal responsibility to assist in safeguarding American democracy, which means our liberties and lives. No one else will do it for us.

2. Every American who fails to do his part and thus allows fascism to win will be forever condemned, just as history condemns those Germans who (by not fighting back) allowed the Nazis to conquer, and bring tragedy to mankind.

3. No American can by his own efforts insure his security. No American can be secure unless all Americans are secure. Only by joining with our neighbors to secure peace and security for our nation can we expect to have any for ourselves and loved ones.

A program such as this promises the greatest reward of all—the assurance of a life well-lived.

[fol. 220] NOW WHO'S UNPATRIOTIC? - December 3, 19

A few days ago the U. S. Supreme Court announced a decision of the utmost importance to all Americans. The Court declared that it is unconstitutional to require any American to tell whether he is or has been a member of the Communist Party. Said Justice Black: ". . . the Constitution gives the witness the privilege of remaining silent. The

attempt by the court to compel (anyone) to testify runs counter to the Fifth Amendment . . ." No one can be forced to incriminate himself.

After all these dark and heart-breaking months of struggle against the undemocratic forces in our country, this decision is a ray of light and hope that perhaps some sanity is returning to our national councils. At last the people have gotten a break. . . .

For what the high Court is saying is that we who have been fighting our native fascists and quislings, the un-American committees and their hordes, have been right all along. And it is they who are wrong. We are the true patriots; they the subversive forces.

Justice demands that we recall again who are the fighters for freedom, and who its betrayers. On freedom's side are such good people as the Hollywood Ten, the Carl Marzanis, the members of the Progressive Party, the Joint Anti Fascist Refugee Committee, the Paul Robesons and the Howard Fasts.

On the other side are the giant corporations, the McArthurs, the Trumans, the Nixons, the American Legions, Chambers of Commerce, and practically all the press, radio and movies.

But it was always thus. The economic royalists and their kept agents undermine democracy; the people safeguard and advance it.

Slowly, very painfully, the truth catches up with the facts, and the public learns the truth. The progressive forces have said all along that the loyalty oaths and witch-hunts are un-American—and now the Supreme Court has had to say so. It remains to be seen whether those who control our government, who demand that everyone else obey the law, will now obey a law they won't like. . . .

WHAT ABOUT KOREA?

Since the progressive forces of the U.S. have been proved right in a matter of such profound importance to all Americans as our constitutional liberties, isn't it possible that we are just as right with respect to other vital issues—for example, that U. S. intervention in Korea is wrong, that our whole foreign policy is wrong?

Is it not significant that those who initiated the loyalty oaths, the assaults on our liberties, also directed the assault on the liberties of the people of Korea and Asia? Isn't it likely that they are just as wrong in the Korean gamble as the Supreme Court says they are in their witchhunting? Whose opinions shall we have more confidence in now?

How long before events will give the decisive answer? What price will the American people yet have to pay in shame and suffering before the Progressives' position regarding our foreign policy is proved correct? Perhaps not too long—for there is evidence of growing uneasiness throughout the land, even in the ranks of the mighty corporations.

Wall Street isn't happy at the way things are going in the Far East. Its "white supremacy soul" has been badly damaged by the resistance of the Korean and Chinese people. And maybe its adding machines are telling the financial dictators that their attempts to subjugate the Asian people are costing more than they can hope to get back in profits?

Satisfaction with the Supreme Court decision, however, must not blind us to the Supreme Courts' limitations in the present period. This is the same Court which refused to review the case of the Hollywood Ten. It's the same tribunal before which as this very moment a trial of ideas is being waged against certain American citizens, leaders of a political party.

We must reserve a full evaluation of the significance of the present decision until the Court acts in the latter case.

[fol. 221] NATIONAL CONTAINMENT - December 28, 1950

From the moment the White House-Wall Street Axis decreed that this nation's primary mission was to "contain world Communism" progressive forces have warned that the real objective was the destruction of American democracy. The announcement by the Axis that a state of national emergency exists is tragic confirmation of that warning.

For even a child can see that in clamping an emergency status on the country, it is the American people who are being contained, it is the promises of democracy that are being contained, not Communism. It is our living standards, our liberties, and lives, that are being further restricted.

The emergency proclamation provides the Axis with the pseudo-legal framework for riveting the police state shackles on us more firmly. It could be the next-to-the-last step before the fascists take over in all their evil power.

It is true that when the Republicans and Democrats revealed their program for the "containment of international Communism" they did have (and still do) as an important objective the domination of the economic and political resources of other nations. But in this they have been foredoomed to failure—by the achievements of the democratic peoples of China, Korea, Indo-China. East Europe.

The bipartisans did make limited (and temporary) gains in certain areas—but they were after much bigger game. Having failed in these global projects, they are compelled by the inner necessity of their depravity and their goal to turn on the people of their own country. That is the basic reason for the emergency.

Its proclamation at this time is evidence that the period of national containment has arrived—for it is the period of national desperation for the Axis. The enemies of American democracy are terror-stricken. They fear the wrath of a people betrayed. They are afraid that their treachery will be completely exposed and the people will demand an accounting.

And well might they be afraid—for from every cross-section of the people protests are arising. A West Virginia paper damns the continued invasion of Korea in an editorial entitled "This Is Murder." An Ohio manufacturer demands the impeachment of Truman. And a Herbert Hoover (for his own purposes) urges a stop to this program of disaster. While mothers everywhere are demanding the return of their sons from Korea.

Opiate for the People

Gen. Marshall asserts that the purpose of the national emergency is to give Americans a "psychological" shot-in-the-arm, to make them aware of their responsibilities. It would be far more correct to describe the purpose as being to inject a drug to deaden the awareness of what is

going on, to terrify the people into silence by threatening them with economic and political reprisals, and to blind them to the truth.

As regards the Negro people, it is doubtful that this national emergency will change their life radically. They have been living under emergency conditions for generations. Economically, socially, politically, their lives and security have been in a precarious state at all times. The blight of second-class citizenship, to which they have been and are subjected in this "bastion of Western civilization," is the status to which all other American citizens will be subjected—if they do not resist.

In a real sense one of the major reasons why all Americans who don't see eye to eye with the bipartisans are faced with second-class citizenship is because they permitted the exploiters of this great land to fasten it upon Negro-Americans. Had this been prevented, America would not now be in the condition it is; America would be a truly great nation in the forefront of the epochal struggle for peace and democracy—not in the leadership of the world's reactionary forces.

This is, indeed, a period of grave national emergency. No one in his right mind dare minimize the danger. But it is at the same time a period of unparalleled opportunity to put a stop to the betrayals by the rulers, to set America back on the path of brotherhood and peace.

This is the time to speak out and act! Write to the President. Write to your congressmen. Get all your friends to do so. Demand the reversal of the catastrophic domestic and foreign programs in which the bipartisans are engaged.

An ounce of courage now, while we can still speak out, can be decisive for our families, for our nation, for world peace!

[fol. 222] FREEDOM IN THE DAILY NEWS - January 4, 1951

So much has been said and proved in recent years about the dishonesty of newspapers in these United States that it is almost inconceivable any grammar school graduate believes the myths about "freedom of the press." Certainly the four FDR elections proved that little respect Americans have for their newspapers.

What should give us cause for concern, however, is the fact that few of us recognize clearly the active part the press plays in the whole machinery of repression and destruction of our civil liberties. The press is not an innocent, impartial bystander in the struggle between democracy and fascism.

It is a fighting and willing participant in the subversion of American democracy—which it pretends to safeguard. (Something like a cobra "safeguarding" a lamb.)

A lesson in how the press is used to destroy free government is provided by the experience of the French people. In World War II France fell in less than a month to Nazi hordes. We know now that one of the major reasons was the years of sabotage by the French press, whose publishers had sold out to the Nazis, and used the press to promote Nazi ideology and to disarm the French people intellectually (yes, and spiritually) for the battles ahead.

Similarly, the role of the press in our country is to prepare the public mind for a more-ready acceptance of police state measures. Or, more accurately, to condition the public mind so that the people will not protest and resist fascist advances. This the press does both by the sins of commission and omission.

By unending propaganda for reaction and by betraying its solemn duty to keep us informed and arm us with the truth, the press does its dirty work. By deliberately misinforming its readers and by deliberately failing to inform them about the things they should know to be the well-informed citizens without whom democracy anywhere cannot long survive.

A Case In Point

A current situation which illustrates the inter-relations of the various arms of reaction, and how the press eagerly perverts its mission, is the treatment by the Los Angeles press of the arrest and detention of four local residents for deportation—David Huyn, Miriam Stevenson, Harry Carlisle and Frank Carlson.

Here is a case where fascist legislation, the McCarran Act, is being used in an attempt to deport from the U. S. four good people who because of their services to their fellowmen would be a credit to any nation—while outright Nazis

are welcomed to the USA and Truman embraces bloody fascist Franco.

Now, to begin with, if the press were fulfilling its responsibility to its readers, and to its self-announced dedication to the preservation of democratic ideals, would it not have fought against the unconstitutional McCarran Bill? But the press fought for this anti-democratic bill. It lied and continues to lie about the law's provisions and objectives.

Secondly, assume for the sake of discussion that the press made an honest mistake about the McCarran Bill. Wouldn't you think that an honest press would keep the people informed about how it is being administered, and change its opinion when it found that the law was being used only (thus far) to hound progressives from the land, to intimidate all who protest at what is going on in the nation today? Have you heard of any Ku Kluxers or traitorous profiteers being hounded?

And when Americans want to buy space to tell their neighbors what is going on, to perform the duty the press is supposed to be doing, the newspapers refuse to sell the space —as happened a few days ago when the Los Angeles Daily News refused to accept an ad urging readers to write and ask the immigration authorities to release David Huyn, Miriam Stevenson, Harry Carlisle and Frank Carlson—good people who are being deprived of their freedom.

Thirdly, wouldn't it be reasonable to assume that even a negligent press, if only to keep up some pretense of its claims to fairplay and "freedom of the press," would open its columns to all Americans on an equal basis?

What a foolish question. Of course not. For a press (or radio and movie industries, or the school system, for that matter) that is so deeply committed to the anti-democratic conspiracy being engineered by the economic royalists to whom they have sold out (as did the French publishers) and of whom they are an integral part, will not and cannot be concerned any longer with the pretenses even to lip-service to the "ideal" they have discarded.

For they think "der tag" for which they have been preparing is about to dawn . . . and they shall reap their just reward.

[fol. 223] NAZIS TEACH AMERICAN GENERALS - January 11, 1951

Plans are afoot to foist universal military service on America's youth. Spokesmen for the corporations, the Administration, the militarists, have been harping on the theme that universal military service is essential to our security . . . and that all youth owe their country some time in the armed forces.

That is the pet theme, for instance, of Ike Eisenhower, who is going forth to lead Nazi soldiers, among others, in a new crusade for the "Free World." And Congressmen, secure in their age and well-paying jobs, very impatient for the sacrifice, are insisting that the induction age be lowered to 18 years.

These propagandists, however, have not told the American people that their plan for the regimentation of our youth is based on the ideas of General Heinz Guderian, Hitler's chief of staff, who did so much to bring death to so many of America's youth in the last war.

On February 10, 1950, the U.S. News & World Report stated that the plans for universal military service were based in part on the plans of Gen. Guderian—who boasted that his plans were the bible for American military officers. Groundwork for presentation of the Guderian plan to the public was laid with the appointment of Gen. George Marshall as Secretary of Defense.

We must differentiate first between universal military service and universal military training and selective service. They are not the same. Universal military service would conscript every American of 19 years (maybe 18 years) for at least 24 months, regardless of physical, mental, educational or marital status. Only the totally disabled or insane would be exempted. Higher education, in most cases, could not begin until after completion of the service. All youth would be subject to overseas service. (Shades of Korea!)

Not all physically qualified youth would be sent into the armed forces. Some of them would be trained in "civilian defense" jobs under army supervision, and would be subject for assignment for factory work, still under military supervision. This would create a "scab army" available for duty

at any plan. (What a threat this could be to organized labor!)

The years 18-21 are among the most impressionable of youth. Knowing what we do of the anti-democratic ideology of our militarists and their basic inhumanity (look at McArthur in Korea, and Gen. Clark calling for an "army of killers") we must realize that the effect of such military indoctrination of our youth will be a real threat to the very existence of democratic government in the USA. Remember what Hitler did with and to the German jugend.

Military Dictatorship

A fundamental concept of the Nazi Guderian plan, favored by our militarists, is to eliminate all layers of civilian authority between the President and the military. That this points to a clear and present danger of military control of the American government is evident from what the generals have been doing since the end of the last war. They have already infiltrated many levels of our government.

In May 1950, Drew Peason reported "on the eagerness of the military to encroach on the civilian branches of the government. A lot of things have been going on which the public doesn't know about, all pointing toward more and more military rule."

This is proved not only by such blatant interference even in the conduct of our foreign affairs (it's Mikado McArthur who's been dictating our policy in the East), and such criminal warmongering as that of the generals yelling for "preventative war," but also by such moves as making generals college presidents.

It is reported, further, that American generals are much taken with the notion of establishing an American General Staff, similar in structure to the hated German General Staff which brought so much tragedy to Germany and the world. This is something the American people dare never permit, at the risk of losing their liberties and all control of their government.

So, our militarists have come full circle! From fighting the Nazis in a war against fascism to aping Nazi methods in what must be a war against democracy and their own

people! Nazi generals teaching American generals how to "save democracy." There you have the fruit in all its evil of the Truman Doctrines, the Marshall Plans, and the "crusades to contain Communism."

[fol. 224] TIME FOR COURAGE - January 8, 1951

This is indeed a time to try the souls of men and women—and it is understandable that some of us are having a very difficult time deciding what our responsibilities are.

Faced with what they consider the evidence of the overwhelming strength of American fascism, some of our neighbors are saying: "What's the use? Reaction's in the saddle. What can you do but go along, try to ride it out?" Such a view indicates a serious misundertanding of the situation.

The misunderstanding, an over-estimation of the power of American fascism, is based on a false premise: that the rulers of this land are as strong as they appear to be on the surface. They are not.

Let us examine several of their operations and see for ourselves if they are as strong—and if their strength is as invincible—as their posturing and propaganda have painted them.

1) It is clear to every thinking person today that in resorting to war preparations and actual warfare, the administration and the corporations for whom it speaks are not acting to improve the welfare of the common people (thus insuring the nation's security), but are doing these things only to save and increase their own profits and power. Even Wall Street spokesmen admit repeatedly that our economy is very shaky and that war orders are essential to stave off a major depression.

When we relate the weakness of United States economy to the even more rotten economic structures of the other nations in the "Western world" we get a first-class picture of vast weakness, not strength. It is a truism that without real and broad economic strength you cannot have real—certainly not permanent—political power. Therefore, where America's rulers should be the strongest they are the weakest.

2) The efforts of Truman's administration since its incep-

tion to force thought control on Americans, to suppress all distant—plus the official terror directed against labor leaders, minority leaders, and other responsible citizens—certainly are no proof of its confident strength. Quite the contrary. A government which was in the right would be confident of and would be supported by the devotion of its citizens—and would not need to regiment their lives and thoughts. Thought control and official terror are proof positive of the administration's weakness. It fears the people.

3) Will anyone in his right mind assert today that American imperialism's aggression in the Far East, and elsewhere, proves its overwhelming strength? (Not even Taft and Hoover.) Can any government be considered strong, the bankruptcy of whose foreign policies has been so exposed as Truman's in Korea? Whose military forces and leadership has suffered such setbacks? Whose actions have lost it the support even of most of the anti-democratic "allies" it has over the globe? The questions answer themselves.

People Want Peace

Perhaps the most striking revelation of the weakness of the nation's rulers—of their unfitness for leadership and of their complete moral bankruptcy—is offered in the report they wrote for Truman on the state of the nation.

They know the American people want peace, that we don't want our sons slaughtered on foreign fields to insure greater profits for the Morgans and MacArthurs—and they offer us only the prospects of more slaughter in other foreign lands.

Truman and his associates know the people want peace, the chance to raise their families in security, to give them healthy minds and bodies, to build homes and schools and hospitals—and he says we must prepare for war.

According to the nation's quislings, the America of Jefferson and Lincoln, of Roosevelt and Robeson, is to find its "true destiny" in becoming a police and making war endlessly. Wasn't it Mussolini (remember him?) who said that war was the highest form of civilization? And wasn't it Hitler who proclaimed that his nation would find peace

through tanks and planes and bombs? How invincible did these two misleaders prove to be?

Those Americans among us who are confused and frightened must see that fascism can never mean everlasting power. By its very nature it is its own sure grave digger. It cannot last long. (This is not to say that it isn't dangerous and powerful while it lasts or that the price of defeating it will be cheap.)

We must understand that those of us who give up the fight for democracy too easily are helping the fascists, are casting our lot with the fascists—and will inevitably go down with them. While those Americans who hold out, who fight back, will inevitably win—and attain the real power in this nation.

(To Be Continued)

[fol. 225] TIME FOR COURAGE — January 25, 1951

Justice Brandeis, one of the greatest scholars and statesmen this country ever produced, once said: "The greatest menace to freedom is an inert people." This is not merely an opinion, but a historical fact . . . and points to part of the explanation for the mistake many people are making in over-estimating the strength of American reactionaries.

Because many Americans are themselves inert—indifferent to crises in national and international affairs or unable to determine how they can serve in such crises, because they are uninformed or unaware of their responsibilities as citizens—they tend to underestimate their own power and overestimate the strength of the opposition.

Once the majority of us wake up, cease being inert, and learn who the real enemy is (the giant corporations and their official flunkeys) and discover the enemy's real objectives (to make us all slaves serving the privileged few)—then we can get a true measure of our own power and how it can be applied in solving our own and our country's problems.

Then what seems to be the "overwhelming" power of the ruling class can be seen in its proper perspective, and much of their present activities will be revealed as evidence of weakness and not strength.

Much of this awakening occurs when we begin to under-

stand that by keeping quiet, by meekly conforming to the regimentation which the official terrorists are trying to impose on us, we cannot gain anything substantial for ourselves and families. By "going along" we are in effect sacrificing permanent security for a very temporary gain.

Individually we may win some temporary convenience or comfort, but not for long. Because true security for the individual can only come when all of us are secure. No one person himself in the world today can, by his own efforts guarantee his own security, let alone his family's. Thus, by helping to create a secure society for all Americans we will be doing the most and best to create it for ourselves and loved ones.

Time to Fight

Certainly this means paying a price, a great price in some cases. But will it mean any greater sacrifice than millions of freedom-loving people have had to pay in the past? Than the Negro people have had to pay for centuries? What makes other Americans *;thnik* they can "get it wholesale?"

Certainly times are tough. But are they any tougher than Americans faced at Valley Forge? Or during the Civil War? Any tougher than the Allies faced at the start of World War II? Are the odds any greater against us than the Chinese people faced against the combined danger of Chiang-Kai Shek and U.S. arms?

Let's get together then, and gain strength from each other, and added courage from an understanding of certain basic facts of life in 1951:

1. We who want peace and a democratic America are not alone. Hundreds of millions of people throughout the world are on our side. Look at the millions in the World Partisans for Peace, and the influence they have already had in staying the atom-itchy hands of our militarists.

2. We are all naturally concerned with the price we will have to pay for refusing to collaborate with American fascists, refusing to knuckle under and accept regimentation. It may mean loss of jobs, increased social prejudice, imprisonment and worse. But all these prices many are already paying—and all the rest of us will have to pay

anyway if we allow the fascists to take full power. And it will be for nothing but service to fascism.

Whereas, if we are willing to fight now (not wish later on that we had) it will be a real investment in freedom and security for our families and neighbors. And the sooner the more of us fight back, the less will be the price we will have to pay and fewer of us will have to pay it. Today, fighting back is the only way to save ourselves and our nation.

3. People are fighting back already, and protesting, all over America. They don't like what our government is doing at home or abroad, and they are saying so. It is easier to talk to people today. In markets, on streetcars, in private homes, everywhere, Americans are talking and thinking.

[fol. 226] And many must be learning what America's history so eloquently proves: that there are times when it is a greater loyalty to American ideals to refuse to conform to the dictates of evil men in power, *hat* it is a greater patriotism to oppose the anti-democratic conduct of governmental offic*a*ils.

We who fight for our rights and the rights of all people are the better Americans.

(To be continued)

[fol. 227] THE VATICAN'S POLITICAL POWER - *March 15*

President Truman found it necessary recently to deny reports that he plans to accredit an American ambassador to the Vatican. In view of Truman's record for honesty, we will not be surprised to learn shortly that such an ambassador has been sent from the USA to Rome.

Be that as it may, it is well to know something of the role of the Vatican in world politics—as illustrated, for example, by the part it played in World War II. For it is with the Vatican's role as a world political power that we will be (and have been) dealing. After the last war the Allies captured numerous documents which revealed the relations between the Pope and other political personages. An outstanding authority on the subject is Avro Manhattan's work THE VATICAN IN WORLD POLITICS—a book well worth reading and re-reading.

After a fully documented expose of the immense contributions made directly by the Vatican and the national hierarchies in Italy, Spain, Germany and elsewhere in helping Mussolini, Franco, Hitler and other powers—the author presents a detailed account of how the Vatican helped Hitler launch World War II and supported the Axis to the day of its downfall.

When Hitler was preparing to invade Poland he asked the Pope "first, not to condemn the invasion, and secondly, not to ask the Catholics in Poland to oppose it, but to rally them to a crusade against the Soviets." The Pope agreed. Not a word of condemnation did he offer when Poland was overrun in 1939. Contrast this with his "lofty moral" condemnation of the USSR when she fought Finland.

When Norway was invaded in 1940 the Pope was asked to condemn the invasion. Again he remained dumb . . . though only a few months before he widely publicized his "five peace propositions" in which he claimed concern for the "rights of small nations." When Belgium, France and Holland were conquered "the Vatican ordered the German hierarchy to say prayers of thanksgiving in all German Catholic Churches for the Fuehrer."

And the Pope opened secret-negotiations with Hitler for a new Concordat—an agreement with Hitler in which, in return for a privileged position for the Church in the New Germany and "wherever German armies conquered," the Hierarchy would "make itself indispensable to the nation for the victorious conclusion of the war." In January 1941 the German bishops in an official statement expressed the hope that they "shall be allotted a share in the internal reconstruction of the Greater Reich. . . ."

No Help to the Allies

As Nazi armies ravaged vast areas of the USSR, the Vatican advised the national hierarchies throughout the world, even in the Allied countries, "to support the military campaign against the Godless Russians. . . ."

But when the Soviet Union began to counterattack, the Vatican tried desperately to keep the USA and Great Britain from aiding our Ally and to "find a means of preventing Russia from advancing westwards."

Roosevelt advised the Pope that there was no hope of a negotiated peace with Hitler and urged that the Vatican should "come to some understanding" with the USSR. When the Vatican refused, FDR sent Msgr. Spellman to Rome—where the Pope informed him that he could not "accept the request of President Roosevelt to call on the Catholic world to fight Nazi Germany . . . because the Vatican is unable to identify itself with the war aims of any group of belligerents."

However, as the evil Nazi power reached its final days the Vatican called urgently for a "peace without revenge" and "began once more to warn the victorious nations . . . that the Allies had to be generous to Germany and . . . that they had to take measures to prevent the spreading of Communism. . . ."

When the Allies entered Germany, the German cardinals and bishops began to "thunder against wicked Nazism"—but one of their leaders, Archbishop Groeber, published a pastoral letter confessing ". . . in the eyes of God at least we (the hierarchy) bear quite a bit of responsibility." Amen.

[fol. 228] ECONOMIC NOTES - March 22, 1951

Several weeks ago we considered the fact that practically all newspapers, radio programs, et cetera, are so dishonest that the person who wants to be truthfully informed about world affairs must get his information elsewhere than in the metropolitan press, the radio, the publicized books.

In our last three columns we have discussed the material to be found in three examples of reliable sources of information: Harry Haywood's book NEGRO LIBERATION, the monthly publication LATIN AMERICAN FACTS, and Avro Manhattan's THE VATICAN IN WORLD POLITICS.

In today's article (the last of the series) we present excerpts from the monthly research bulletin ECONOMIC NOTES—which has for many years been the outstanding source of reliable information on our nation's economy. It is publications of this type which we need to arm us with the facts essential to understand what is going on.

As you and I and our neighbors watch our shrinking

weekly income buy less and less of food and clothing for our families, it is well to know that the Journal of Commerce is able to assure its wealthy readers that "The general wage-price freeze proved a good deal less of a threat to corporate profits than many had feared." While Dun's Review assures the same privileged few that 1951 will "be an exceptionally good year for business. Despite tax increases should remain very high."

That these financial counsellors know what they are talking about is proved by Truman's own Council of Economic Advisors who have reported that "the net profits of $22,400,000,000 last year were more than double the profits of the wartime year 1944 . . ." Never before even in a full-scale war have corporate profits been so high.

Moody's Stock Survey expects that profits before taxes could well be even higher (in 1951) than the fantastic record of 1950. But the Wall Street Journal warns that "A peace scare might knock a lot of profit out. . . ."

High Prices

With the cost of living at the highest point in history, the director of the phoney program of the Office of Price Stabilization admitted that prices will continue to rise, perhaps another 5% to 7% by midsummer—after which he hopes some stability will be achieved. As the conservative N. Y. Herald Tribune comments: "A price stabilizer who is . . . willing to accept a 5%-6% rise is a stabilizer who is likely to prove powerless to prevent a 10%-12% rise. . . ."

Effective enforcement of even the weak price stabilization program will be virtually impossible—considering that there are only 500 employees on the staff compared to 65,000 during World War II. And what makes it worse is that the Department of Justice rather than the price agency has the job of enforcing the new law. As one former OPA official reports "The Justice Dep't . . . is subject to political pressure."

Prices are continuously climbing upwards. The U. S. Bureau of Labor Statistics' consumer price index was 81% higher in December 1950 than in August 1939. It was 4.8% higher than in June 1950—when the Korean intervention

was launched. The Bureau says that the cost of food alone is 8% higher than in June 1950. The food dollar was worth only 47.7c in November 1950.

Meanwhile unemployment is still serious in certain industrial areas. The same federal Bureau (whose figures always understate the truth) reports 2½ million jobless in January 1951. The United Electrical Workers Union, whose figures are more reliable, puts the unemployed figure at 3½ million.

But, the use of child labor is increasing. In April 1950 there were 663,000 boys and girls only 14 and 15 years old at work,—more than twice the number reported working ten years before. Some 3 million boys and girls at work at some time during 1949.

That then is the state of our economy: the poor getting poorer, the rich getting richer!

[fol. 229] THE CESSPOOL - March 29, 1951

The moral fiber of our time; well, and tragically, illustrated by the contrast between the furor created over the bribery of several basketball players in Eastern colleges . . . and the profound silence on the part of the leaders of our society in the face of the grave violations of our moral codes and the treasonous betrayals of our political codes by the very leaders of our land.

What is particularly revolting about the sanctimonious outcries aroused by the bribery of athletes is that those who claim to be so outraged are the very ones who have taught these young men that "that's the way to get ahead." For it's "dog eat dog" and "I'll get mine first; to hell with the other guy." Education by example has always been more effective than education by preaching.

Why should these athletes have felt that they were doing anything wrong when every day, all around them, their elders steal, and betray and lie,—and gain riches, honor and power thereby?

Consider the Kefauver Committee's investigations of the unholy marriage between the rulers of our political world and the criminal world. A William O'Dwyer, mayor of a great city, accepts "gifts" from a Frank Costello—and

instead of being driven from the company of decent men is rewarded by being made ambassador to Mexico by the president of the United States.

While this same president assures the nation that all his aides are honorable men . . . as the investigation of the RFC proves that many of them are crooks. Congressmen like Andrew May and Parnell Thomas are jailed for stealing from the government—but that doesn't keep our leaders from permitting a Thomas to set himself as arbiter of what is good Americanism, and what is culture.

But then, educators charged with the solemn obligation of moulding the mind and character of American youth eagerly accept regimentation of the curriculum—in exchange for military funds; and rationalize it all in the name of "patriotism." Professors, who should be inspiring our youth with a militant determination to fight for democratic principles, gladly embrace the yoke of "loyalty oaths"—to save their jobs and comforts, temporarily.

Traitor! Traitor!

Betrayal is in the air. Judges, with impunity, violate our constitutional rights—and editors honor them for it. Stool pigeons are the new national heroes, and hypocrisy has been raised to the level of national policy.

The president violates his oath of office by dragging us into war—and the nation's spiritual leaders applaud. But when the federal government betrays its trust in failing to defend Negro citizens from the Southern lynchers, the same leaders are dumb as the dead.

The famed American standard of living is deliberately lowered, the cost of living highest in history—but the captains of industry demand that workers be paid still less and taxed still more, while their profits are the highest in history . . . fed as they are on war orders. And the stock market shudders whenever the chances for peace brighten.

Millions of human beings gave their lives in the last war to defeat the anti-democratic forces of the earth. The people earned, and that great victory promised, peace and security and more democracy. But the leaders offer only more war, more fascism, less security, less democracy. Was there ever a betrayal as awful as this?

But silent, silent as the graves into which they would lead this great nation, are the civic, industrial and moral leaders of America—who, naturally enough, righteously condemn basketball players for following their elders example and accepting bribes.

They are men without principles, without morals, without hope—these leaders of our land. It is the students in our colleges, the youth of America, who have far higher principles than their elders—and therein lies the hope of our nation.

[fol. 230] THE CHOICE BEFORE US – April 19, 1951

While on duty with the Seventh U. S. Army in Germany in 1945, I made the acquaintance of a remarkable man, Edward Kupfer. He had been a prisoner in the Dachau concentration camp and had been freed by our troops.

Edward Kupfer was remarkable in that he had succeeded in achieving an amazing self-imposed mission—that of writing a history of Dachau under the very eyes of the Nazis who guarded him. Everyone can tell you that this was an impossible task. Yet Kupfer did it. The U. S. Army Intelligence verified that he did it. (How it was done is another story . . .)

The fact of Kupfer's achievement was relayed to the Seventh Army Headquarters in Heidelberg. As orientation officer for that army, responsible for supervising the political education program for our troops, I decided to see Kupfer—believing that he could teach me much which would be valuable in that program.

A man who had survived the hell of fascism and returned to the world of the living could teach us lessons (I believed) which would be helpful should we Americans be faced with problems in defending democracy similar to those the German anti-fascists faced during Hitler's rise to power.

From other survivors of Hitlerism I had learned that one of the major factors which contributed to the Nazis' success was the failure of the German anti-fascist forces to achieve unity in the struggle against them. Had these forces united, the Nazis would not have conquered—despite the immense help they received from th- financiers and politicians in other lands, including the U.S.A.

In discussion with Kupfer, I concentrated on another

phase of the problem which interested me deeply. Having observed that there were all types of human beings among those rescued by the Allies from the concentration camps, I asked Kupfer:

"What was it that determined who had the best chance of surviving after being thrown into the camps?"

"Why, those who knew why they were there!"

Choose Your Side

"What I mean is this," added Kupfer, "the men and women in pre-Hitler Germany who were active in fighting the Nazis, whether through trade union work, or a political movement, or in a progressive writers' club, as I was—they had the best chance of surviving.

"They knew that the fascists cannot tolerate dissent or opposition. They knew that the fascists knew that if the people were allowed to think and speak and act freely, the people themselves would not allow fascism to win. So the fascists, the traitors to their country, had to silence the active fighters for civil liberties, the fighters for decent living standards. The fighters knew, therefore why they were thrown into the concentration camps.

"Having landed in the camps because of their belief in democracy, they had faith left to live by. They had faith that the democratic forces of the world would inevitably triumph and save them. This faith kept them alive.

"But those who did not do their share in the fight to stop the Nazis from conquering Germany, those who compromised with the Nazis and sold out to them—when the Nazis double-crossed them (as fascists always do) and threw them into the concentration camps, they had nothing left to live for, and so they died."

As I expressed my gratitude to him, Kupfer concluded:

"So you see, if you want to take a message back to your countrymen—as you say—tell them they must fight while they still have the chance to fight, and especially while they have the chance to choose the side on which they fight.

"For fight they must and will. No one can be neutral in such a war. The fascists will force you into fighting for them, into becoming one of them, or they will kill you. They have no use for neutrals.

"So, since fight you must, and perhaps die, far better that you give your energies and your life, if need be, for democracy than for fascism. It's the only chance to save yourself anyway. Far better to fight while you can, than wish later on—in the concentration camp—that you had. For that's the sort of self-accusation, mental torture, that will kill you.

"You see now how right we were, we who refused to compromise with the fascists, when we said that the forces of world democracy must inevitably triumph."

[fol. 231] MEXICAN-AMERICAN RELATIONS - April 12, 1951

One of the local metropolitan dailies recently held a contest for the best short essay on "Why Continued Good Relations Between the U.S.A. and Mexico Are Essential to the Success of the United Nations."

Since this is a matter that must be of vital concern to us all, I herewith submit an essay on the subject—one that can be guaranteed not to win any such contest these days:

The position of world power which history has thrust upon our nation, and which our government has assumed, demands that we set an example, in the family of nations, of the highest and best in international relations. If the U.S.A. cannot develop such relations with Mexico, our next-door neighbor, other nations will seriously question our capacity for friendship with them, and our effectiveness in the United Nations will be further compromised.

The state of our affairs with Mexico is a test of our claims to a belief in, and the practice of, democracy. Especially is this true of our declarations about the equality of all men. For the people of Mexico do not have white skins—and neither do most of the world's people. This majority of humanity will judge us (as they have in the past) by the way we treat their colored brothers, and ours, in Mexico.

The foreign policy of the United States is based on the assertion that our government is motivated solely by the desire to assist other nations in achieving the democratic way of life we say we prize. The nature of our relations with Mexico—particularly the way in which the masses of her people benefit from those relations—will help determine

how receptive the United Nations will be to our ideas and our program.

Our success with Mexico would strengthen our relations with all the other Central and South American countries, nations so important to our welfare and the welfare of the world. It would enhance the position of Mexico. A strong and democratic Mexico is essential to the western hemisphere and to the United Nations.

The best of relations between the U.S.A. and Mexico would improve the economic conditions of both countries, and would enable both peoples to feel greater security. Further, in view of our past relations with Mexico, the building of mutually beneficial relations with her would prove that a great nation like ours does learn from past mistakes. This would be invaluable to us and to the United Nations because many nations are seriously disturbed not only by our past errors—as in South America—but our current ones in China, Korea, and elsewhere.

Of unmost importance is the certainty that greater friendship and better relations between Mexico and the U.S.A. would aid materially in democratizing the internal conditions in both countries. A government which is not a good friend to its own people cannot be a good neighbor to others.

Specifically, improved relations between the U.S.A. and Mexico would profoundly influence the treatment accorded the millions of our citizens of Mexican descent. This in turn would very favorably affect our treatment of our Negro citizens and other minorities.

A United States and a Mexico whose own life and institutions are more democratic are assuredly essential to the succes- of the United Nations.

[fol. 232] ELECTION REFLECTIONS - November 23, 19

One of the most powerful men in America today is Senator Robert A. Taft. He is, in every sense, representative of our country's ruling class—particularly of its intellectual dishonesty.

Of the millions of words spoken about the results of the November 7 elections, he made what may yet go down in history as the most absurd and inaccurate observation. Said

R.A.T., the election results are a rejection of "Truman's program for imposing a socialistic planned economy on the American people." It calls to mind Hitler's big lie that his fascism was a program of "national socialism."

Certainly the election was a rejection of Truman's program—his program for war and American fascism, which Taft and his collaborators are helping Truman and his cronies fasten on America. Our country's great tragedy is that most citizens could express their rejection only by voting for Republicans.

There are three major reasons for this: 1) The Progressive Party does not exist in every state and where it does it has not the means to run candidates in all offices; 2) The national hysteria and terror over Communism, manufactured by the Taft-Truman axis to divide and deceive the American people, has scared many people and they are afraid to vote Progressive; 3) Vast numbers of Americans, politically uninformed through deliberate manipulation of our schools and informational media, still think there's a difference between the Republicans and Democrats.

It is not a contradiction to state that the two old machines are the same and that the large vote for the Republicans was a rejection of the Democrats.

The defeat of such leading spokesmen for the Truman Administration as Senators Lucas, Tydings and Myers, and would-be senator Helen G. Douglas, was not a personal defeat, but clearly a repudiation of the Democratic program they espoused. Especially is this true of Douglas—for whom the Democratic Party turned out every big gun from Truman down in the effort to elect her. There could not have been a more decisive repudiation of what the Democratic Party stands for.

No Mandate for Republicanism

If the Republicans believe that the election results are a mandate for them to continue their unreasoning opposition to every measure that will serve the people, they are wilfully blind, and certainly will not win the presidency in 1952. If my friends will forgive me, I will offer the Republicans a program guaranteed to sweep the country for them in 1952.

All they need to do is pledge to: 1) Stop the treasonous waste of American resources in the futile efforts to suppress free people everywhere—and use them instead to build homes and security in America. 2) Take our troops out of Korea, the Philippines, and elsewhere—and use them to safeguard civil liberties in the 48 United States. 3) Smash the corporations' stranglehold on America's economic and political life. 4) Restore freedom of speech and thought to Americans. 5) Join the Soviet Union in rebuilding a democratic United Nations and world peace. These five points represent the real mandate of the people.

The clearest evidence of the meaning of the November 7 elections is given in the great vote in California for the Independent Progressive party. In 1948 some 190,000 votes were cast for Henry Wallace. In 1950, after two years of official terrorism, almost twice that number, 340,000 voters, voted for IPP candidates in California! When this is related to the over 600,000 votes cast for Bernadette Doyle in the primary election for superintendent of education, the real temper and aspirations of the people are evidenced.

Especially revealing is the vote for a Negro leader in the 14th C.D.—particularly in the 62nd Assembly district, where over 8,000 Negroes broke away from their betrayers in the two old parties and voted for Charlotta A. Bass, the Progressive candidate. (In this connection certain individuals like Gus Hawkins, Vince Townsend, et al, have much to answer for to the Negro people.)

The California vote proves that more and more people are becoming aware of the futility of depending on the two very old parties, and are learning that only the Progressive Party's program for peace, security, abundance and brotherhood will meet their needs and save our land.

It may truly be said that if there were not a Progressive Party in existence today, we could have to create one. For today only the Progressive Party, of the three, is an American party. It is the Republican and Democratic parties whose program is un-American.

[fol. 233] Some Notes On

WESTERN CIVILIZATION- June 16, 1950

Whenever the Pontius Pilates on the Potomac manuever to heat up the cold war, which would annihilate most of their fellow-Americans, they wring their greased palms and intone that their only motive is the preservation of Western civilization. Whenever they make a move which thwarts the hopes of humanity, they piously raise their eyes to the stock ticker and assert that their sole purpose is the holy one of spreading the blessings of that civilization.

It is not unreasonable, therefore, for us to examine the nature of this commodity they wish to export, and which they claim as a Western monopoly, and see what it has to offer the oppressed of the earth in the year 1950.

Not until eighty-five years after the Civil War did the U. S. Supreme Court decide that Negroes must be served on railway dining cars and given opportunities for higher education "just the same as whites" (in a land where such opportunities are reserved, for the most part, for the well-to-do.)

While in a renazified Germany a Hitlerite film director is freed of anti-semitic charges on the plea that anti-semitism couldn't be a crime since it was no different from the treatment of Negroes in the United States.

And the International Olympic Committee bars the new State of Israel from participation in the 1952 Olympics but accepts a W. Germany group of Nazis who declare that "The true sporting spirit and the mentality of the German people found its highest expression in Hitler . . . and war is the most beautiful of all sports."

A reference, perhaps, to Washington's coming to the rescue of the French killers of the Viet-Namese patriots by agreeing to finance that "dirty war," just as we're still financing the ogre Chiang's murder of innocent Chinese.

While the "big three" approve a new German army and Germany's manufacture of explosives—as the Jewish communities there are forced to form defense organizations again, only five short years after V-E Day.

The Jews need protection in Chicago too, and in Peekskill, where they and their Negro neighbors are assaulted—for which the Deweys and Achesons blame the communists, in

accordance no doubt with Truman's pledge that the world will be told the truth about American life.

Which is the explanation we may soon be given for the death from starvation of American children in the midst of abundance in the San Joaquin Valley and the legal lynching of the 6 Trenton Negroes, the Rosa Ingrams and hundreds of other Americans.

Over ten million of us are unemployed, more than half of all Americans can't afford even a minimum standard of living, we need many more schools and hospitals—but the Tafts and Trumans say that more important than these is the smashing of our labor unions and the "economic reconstruction" of Europe, meaning giving guns to the fascists of Europe for crushing the rising discontent in that land.

So, the bi-partisans offer to meet the needs of our youth with peacetime conscription, police brutality, regimentation of their teachers, and the militarization of our society.

And if our parents protest that this is not the American way of life, not what we were promised for the victory over fascist arms, the Western civilizers deprive us of employment, deport us, deny us impartial juries, imprison us, jail the lawyers who defend us, and set neighbor to spy on neighbor.

Upholders of religion, the pope threatens Italian citizens with excommunication if they vote their conscience—as the devout Truman tells them how to vote, and orders the H-bomb, to bring hell to all the faithful.

All this, says the president, brings us "nearer to peace"—and so he refuses to admit peace delegates to our country, and welcomes the dregs of the earth who live only for a third world war.

Exposing their moral, spiritual and intellectual bankruptcy, the bipartisan beasts, diseased with colossal conceit and contempt for the people, demonstrate they are trying to make civilization over in their own image—a devil's amalgam of hypocrasy and brutality, idolization of property, want and agony, betrayal and filth, lies and death.

[fol. 234] Upon which a noted scholar recently commented: ". . . the people cannot live on lies, and the ruling class is incapable of meeting the needs of life. Its problems are insoluble and therefore its defeat is certain."

FREE LAWSON, TRUMBO, DENNIS,
FAST—OR THIS YEAR OF FREEDOM
MAY BE YOUR LAST!

Write the President . . .

[fol. 235] ROBESON VS. FLAGS-AD – April 27 1950

Paul Robeson is not acceptable to the management of the Philharmonic Auditorium—and the engineers of the cold war—but Kirsten Flagstad is. The man who represents the bravest and best in American democracy is hated by those who proclaim themselves the embodiment of Americanism, and shower their applause on the woman who collaborated with European fascists. Is it to be concluded therefore that their concept of Americanism and the ideology of fascism are similar?

Last week the management of the Philharmonic refused to rent their auditorium for a concert by Robeson, one of the great singers of all time. Have you heard any outraged protests by those who consider themselves the leaders of our community? Why are the voices of our civil and religious leaders still at such brazen denials of our traditional rights and privileges? With the honorable exception of Charlotta Bass, Carey McWilliams, Reuben Borough, Paul Major and Thomas Mann, why don't they protest, as decent Americans have done for generations?

And therein is evidence of one of the major purposes of the cold war, of the onslaught of loyalty oaths and witch hunts and war scares—to divide and intimidate and silence the people, especially those who could and should give leadership in so critical a time. For this is primarily a cold war against the American people, not the Soviet Union.

A Kirsten Flagstad, friend of fascists, is persona grata with the misleaders of our country—and a Paul Robeson, friend of democracy, they fear insanely. This is logical—for those who are rebuilding a Nazi Germany where only five years after the war's end the Jewish people are again forced to form self-defense organizations! This is very logical—for those who contemptuously destroy legal guarantees to persecute the Hollywood Ten, the leaders of the Communist Party, the incorruptible Bridges, exemplars of

the people's determination to safeguard America. This is certainly logical—for those who uphold a Parnell Thomas and a Jack Tenney and a Mundt-Ferguson as "100% Americans," and offer shelter to every European and Asiatic traitor who flees the wrath of his own people.

What a desecration this is of the deaths thousands of Americans in the war against fascism! What a betrayal this is of the sacrifices of millions of Americans on the home front and in the lands and armies of our allies! Followed to its logical conclusion this insanity will soon label as "un-American" every American who contributed to the defeat of the German and Japanese fascists. I predict that those who are guilty of this sell-out of our great victory will be damned by history as the most obscene and treasonous traitors of all time.

Called to account they will be, as they must. Called to account they will be by the never-ending struggles of the courageous democrats in our land—by the people who after 300 years of oppression not only still fight back but produce a Robeson and a DuBois, by the people who can produce a Wallace and a Marcantonio, by the people in the progressive ranks today.

We are the guarantee that American democracy will survive and flourish—not the bi-partisans who doublecross the people, not the university regents who fear democracy and the people's knowledge, not the elite who fawn on a Flagstad and are revolted by a Robeson.

It is we are who are the inheritors of the ideals of Jefferson and Lincoln—we who fight against Mundt-Nixon and for FEPC, we who defend the right of everyone to speak and teach, including the Communists, we who fight restrictive covenants and police brutality, we who fight for full employment and for world peace.

We are the true Americans, who think and act like Robeson. They have lost faith in America, who prefer the fascists. We belong here—and America belongs to us!

PAUL ROBESON WILL APPEAR IN CONCERT
FRIDAY, MAY 12, 8 P. M.

ELKS HALL, 4016 S. CENTRAL AVE.

[fol. 236] We Are the Experts · September 28, 1950

Too many of our fellow-citizens have the fixed idea that they don't know enough to have an opinion on various domestic or foreign issues. Too frequently the response to a request for support in election or petition campaigns is "Aw, what do I know about such things? I leave that to the experts. They know best."

For the moment we'll give the obvious retort: "Who are the experts anyway? Does getting rich or elected to office make them geniuses? Look at what a flop that 'great engineer' Hoover was. When you look at the mess they've gotten our country in—you'll call them everything but experts."

What we must understand is that this notion of "not knowing enough to have an opinion" is exactly the idea those who control our country want us to have—and spend millions every week to indoctrinate us with it. They want the average citizen to feel ill-prepared to deal with the key economic or political or social problems which affect our lives—so that he will not ask too many questions and leave things to the "experts" who will then run the country's affairs to suit themselves.

It's true, of course, that many of us were not able to afford all the education we desire. And more of us benefitted little from the deliberately distorted facts and manufactured prejudices which pass for "education" in our schools. And all of us are affected by the propaganda with which the newspapers, magazines, radio and movies hit us in a never-ending deluge of what they call "public information."

All these factors are the 3-pronged weapon of those in power to keep us from being properly informed. And by trying to convince us that we're inadequate to understand and deal with the basic problems which affect us and our country they are trying to make us lose faith in ourselves.

Our counter-attack, therefore, must have the primary

objective of regaining that faith in ourselves, this faith in our ability to control the economic and other factors which influence our lives, this faith in our fight to the better world we can create.

A good way to start is by looking at the record of what we have done and what we've proved ourselves capable of doing—the record of our performance in events that really count, in, for example, the most important test Americans have faced since the Civil War: Democracy's fight against fascism in World War II.

Ask any G.I.—ask your son, your husband, ask yourself. Who won America's part in that war? The professional militarists or our citizen army? The answer: We, the citizen army! The military experts and the regular army hacks would have lost for America if not for us. The citizen army won on the battlefield—and the citizen army won on the homefront.

You who served at home, speak up! Was it the corporation executives who won the homefront battle, or was it the millions of patriotic workers in the factories and fields and offices? Contrast the big corporations' treasonous refusal to produce for the war until they'd been guaranteed enormous profits with our workers' high productivity and their contributions to management through the labor-management committees.

And equally important. The history of every nation in World War II—we dare not tire of repeating—shows that the traitors in every land were from the 'upper' class: the corporations executives, the generals and politicians, the 'experts.' While the saviors of every land were the working people like you and your family, the common people—who proved again they are the better people.

So, let us not be in awe of the hi-politicos and professors and executives—who speak for the monopolies which by their very nature cannot serve the people. Those persons aren't born with a monopoly of wisdom nor any genius for solving all America's key economic, political and social problems. Neither are they born with, nor do they ever learn, a compulsion to serve the best interests of the people and the nation.

We must understand that in tackling any basic problems,

at least as important as—and usually more important than—specific information and technical know-how is a desire, a compulsion, to do that which helps the people most: a personal identification with the welfare of all the people, a love of democracy.

Our guiding principle must be: THAT WHICH SERVES THE PEOPLE BEST IS RIGHT. If it's a domestic problem—for example: How shall the nation's tax funds be spent?—all we need to know (as we do know) is that it will help us and America more if a much larger share than at present is spent for creating jobs by building homes and schools, for health care and for more education, for encouraging our writers, artists and musicians.

[fol. 237] If it's a problem in foreign affairs: all we need to know is that our government should take that action which will help the people of other nations to liberate themselves and build democracy, such actions as will help prevent the anti-democratic gangs everywhere from existing, and will build peace.

When a specific issue arises about which we do not have the time to become informed, then we can turn to trusted leaders whose advice we can use as guides—people like the great scholar Dr. W. E. B. DuBois and the true representative Vito Marcantonio. With their help and our own decent instincts we will be equipped to form an intelligent opinion.

The people do know what makes up the good life. They know what democracy, decency, honesty, justice and brotherhood are. And with renewed faith in our powers and the unity of us all—we will be the masters of our destiny.

[fol. 238] STRENGTH UNTO STRENGTH - May 18, 1950

For many years I have regretted profoundly that I had not personally known Tom Jefferson, Abe Lincoln and Gene Debs. These three above all others in American history I have wanted to know intimately, certain that from such contact I would have drawn priceless understanding and strength for the building of a useful life.

No longer do I feel this loss so keenly—for I am living in the age of Paul Robeson, and I have met him. I think I understand what it must have been like knowing Jefferson, Lincoln and Debs.

The people of Los Angeles who met Paul Robeson this past week have been enriched. They have been cleansed of their fears. They have gained knowledge of their own strength and significance. They have had a vision of the future. This was a visible process—you could see the people glow and bow in his magnificent presence.

After years of subjection to the dehumanizing influences of America's current infamies—here came a man, a clean and honest man, sure of his strength and purpose, from whose person shone the wonder of the dignity of man. A man who carried the hopes of the world's decent people and renewed their faith in themselves—who unfurled again the tattered banner of the American dream and reclaimed for us our right to this great land and its democratic institutions.

Paul Robeson helps to make us better women and men—for he is proof of the supremacy and nobility of a life dedicated to the highest purpose of living: helping to make life better for your fellowmen. He is evidence of the kind of MAN we can be, of the goal of mankind.

Of the kind of people we really are, or would be if society gave us the chance . . . for while we drew strength from him, he drew strength and courage from us. Not only did he declare that this was so, but this is how it is and always must be. For only when one is rooted deeply in the people—like a giant oak pressed to mother earth—can he derive the nourishment which makes him a great leader. Only a great people could produce Robeson.

He is the honor and glory of America. It is he, and such as he, who by his world-wide deeds keeps the name "American" from being completely stripped of the hope it has symbolized for the oppressed of the globe. It is he, and such as he, who will keep it from becoming the stench in the nostrils of history that is forever the Nazis. (To think that only five short years after our victory over fascist arms we should have to say such things . . .).

And it is Robeson's loyalty to America that is questioned! By those who every day in a thousand ways in their gilded graves in banks and factories betray our country for less than the thirty pieces—who destroy another constitutional right every time they breathe! They dare impugn this

man's loyalties. Dying woodpeckers nib-ling at the mighty redwood.

Paul Robeson grows in strength and we with him—and their fears increase. They are afraid of him and of the 15 million other black Americans he is helping to liberate. They reveal their fear in many ways, most glaringly in trying to conceal it. They think to ignore and hide Robeson with their slimy newsprint curtains; not one "big" paper even reported his week-long visit among us—though they found the space to hail German actresses and Japanese businessmen.

One Negro weekly, it must be reported, refused even to accept a paid advertisement for his concert. Certain infamous leaders of the Jewish community, it must be reported, tried to have the concert cancelled. And oh how long and shameful is the list of the "community leaders" of all colors who declined invitations to meet with him.

They were afraid to be seen in the company of this great man who is forever enshrined in the hearts of men and women of goodwill the world over—who is doing so much to safeguard the lives of those same timid creatures. Their cowardly souls have shrunk—as the heads of victims of some savage tribes are shrunk, and they are just as dead. History and America do not need them.

We are the living, and the future is ours. If we stand together, black and white—as Paul Robeson urges—and say "We want to live in dignity!" we will live in dignity. (Look at what the 'weaker' Chinese people did). If we stand together, the millions of us, and say: We want peace, there will be peace!

We have the strength and the right and Paul Robeson on our side. What have they got?

[fol. 239] MEMO FOR THE BOARD OF EDUCATION October 12, 1950

A few days ago my daughter brought home from school a letter sent to all the children by your superintendent, Dr. Stoddard—a learned man, I'm told, who is entrusted with supervising the education of Los Angeles' children.

Written, no doubt, in the spirit of the great moral leader whose precepts the devout members of the Board publicly proclaim—who said "Suffer little children to come unto

me . . .''—the letter told of your plans to drill our little children in methods of ''protecting'' themselves should the atom bombs fall.

Little children being filled with dread and hysteria! Little children being made the pawns and casualties of the dirty war! Little children coming home frightened and confused: ''Mommy, look—I put my hands on my head and the bombs won't hurt me!'' ''Daddy, please—can't we move where there is no sky so the bombs can't fall on us?''

Are there any words in all the languages you teach—honorable members of the Board—to adequately describe the horror and revulsion every decent human being must feel at this monstrous thing you have done?

All the authorities say—and you teach—that children need security above all if they are to become sound men and women. We can have a strong and good nation only if our children are given the opportunity to build healthy minds and bodies. (And soon there is to be another White House Conference On Children issuing thousands of words of advice on how to raise America's children . . .)

How can we parents give our children the security they need if the schools—which should be helping us—destroy all that we can build up? Don't you—and those who think as you do—want America to be a healthy nation? Or do you want a nation of neurotics to be used as Hitler used the German jugend?

Will your next step be—in line with the Hitlerian lessons which seem to be guiding our nation's rulers—to tell the children to spy upon their parents? Why not? Is this more horrible than what you have already done? Will you protest that you wouldn't dream of destroying the sanctity of the American home which—you orate—is ''the foundation of our great nation?''

The Enemy Within

You may reply that you did this thing because you were instructed to by ''higher authority.'' We won't doubt it. We understand that this is an integral part of the war being waged against the American people and the democratic way of life.

But for that very reason you should be fighting back—if

only to practice what you preach in your civics classes and to protect our children and our country's future. That's what you're elected for—not to collaborate with America's fascists, the way German educators did with theirs.

What is especially revolting about your action—you who presume to teach our children honesty and intelligent reasoning—is the utter hypocrisy in your trying to shove the big lie down our children's throats, the lie that there must be a war and that we are in imminent danger of "another nation" dropping atom bombs on us.

When the truth is that those with whom you are collaborating are the only ones threatening to drop atom bombs! When the truth is that there is no defense against them—and all your drills will be futile!

Does this not show up the real purpose of your action—to use our children against us, as weapons against their parents' refusal to go all out for the national insanity which our rulers are manufacturing? Isn't it clear that your purpose is to further condition our children, and us, for a life of regimentation, war and insecurity—for American fascism?

[fol. 240] Instead of having these futile, criminal drills, why don't you discuss with our children the possibilities of peace, the virtues of security? Why don't you spend your energies building more schools, training more and better teachers, developing more constructive curricula?

Why don't you educate our older children to an understanding of the real dangers which confront them and America and help build them into believers in and fighters for democracy—instead of perpetuating the lies and prejudices which they will have to unlearn as they grow up?

Yes, you and your kind want to condition our children for a world of war and death. We want them to live in and build a world of peace and life. That is the issue!

You have proved yourselves unfit for this task. We will have to do the job ourselves.

[fol. 241] FORCE AND VIOLENCE — May 25, 1950

At a recent conference in this community dealing with the alleged "hoodlum menace" one speaker, according to press reports, declared; "We are not accomplishing what

we should to make our youths better citizens. Maybe we aren't tough enough . . . Maybe we should use more force. It's going to take some killing. . . ."

For a long time now we have been propagandized with the charge that "the Reds" advocate the use of force and violence to overthrow our government. Day in day out this claim is repeated—and used as the justification for fastening a police state upon us.

It is vehemently asserted that advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our democratic processes. Those who preach it must be punished.

I submit, then, that to urge a conference of law enforcement officials (as reported above) to kill our youth is advocating force and violence and the person doing it is criminally responsible. I predict, however, that in this case—as in many similar ones—nothing will be done to him, for this brazen advocate of murder is not a communist, but one of our "best people," an elected public official, Supervisor Roger W. Jessup.

No, Jessup is not communist (I would guess), and neither is William Jeffers, the industrialist, who also urged very rough treatment for our youth. The editors of the metropolitan dailies who joined in the cry for blood are not communists (as they will be the first to proclaim), nor are the persons who lynch Negroes and "repatriate" Mexicans. Neither are the Congressmen who urge atomic destruction of another nation—nor "Hydrogen Harry" who says he's ready to drop another.

Strange, isn't it, that not one of those guilty of urging and using force and violence is a member of the political party accused of advocating it? Quite the contrary. Every one of them belongs to the Republicans and Democrats (I suspect) and represents our "better class"—the rulers of America, who characteristically accuse others of doing what they themselves are doing or plan to do to our nation.

It isn't strange at all—because as surely as they must breathe to live, so must they resort to violence to "solve" the problems their own insanities create. That is the inescapable logic of fascism. When faced with the necessity of

meeting such people's needs as full employment and full citizenship they are inexorably driven to use force since they will not and can not find it within themselves to give any significant share of their wealth and privileges.

False Issues

They deliberately manufacture false issues—such as "Zoot-suiters" and "Soviet imperialism"—to divert our attention from the real issues. They don't want us to see what they doing to us. They create scapegoats—as Hitler used the Jews—whom they hope we will blame for our ills. And, as degenerate as any, the newspaper publishers join in to stir up the people so as to sell more papers.

In the current publicized "wave of hoodlumism" we find all these elements, mixed as in a witches' brew. The Jessups and the Jeffers', the Heart-s and the Boddys, abetted by such as Biscaituz, rob the minority peoples among us of the opportunity for economic security and human dignity and a wholesome life for our children.

Then they turn around and blame their victims for the conditions in which we live—and urge that our young people be killed. They have to wipe out the evidence of the treasonous failures of the "leaders" of our society.

Their guilt, most evil guilt, is more than compounded when the facts reveal that there has been no real epidemic of hoodlumism. That, in fact, the police records show a marked decrease in juvenile delinquency. And the "big" dailies—rotting shrouds of Satan—have actually combined stories of unrelated accidents and incidents to make it appear that serious crimes have been committed by our youth. This corruption is added to their old tricks of lying headlines and distorted photographs.

There are so many pressing problems facing our young people and ourselves—unemployment, thought control, our government's refusal to make peace. But do you find these 30-pieces-of-silver saddled fuehrers trying to arouse us about them to mobilize our forces to solve them—thus, incidentally, discharging their true responsibilities as public servants?

[fol. 242] What is especially frightening about their demand for the murder of our dispossessed youth is that this

is a logical development of the atom-bomb mentality which infects the land.

The rulers start with loyalty oaths to regiment our thinking. Then they jail people for teaching ideas which differ from their own un-American views. Then they jail citizens who defend the constitutional rights of all of us from destruction by un-American Committees. Then we have the violent attacks of storm troopers on Negroes and Jews at Peekskill.

Concentration Camps Next

Now they are urging killing of our oppressed minorities. The next step—if we don't stop them—will be concentration camps and crematoria for all Americans who refuse to be their willing slaves.

We have been told that loyalty oaths were designed to uncover those who would undermine the American way of life. Why then isn't the test of loyalty applied to those who are now fomenting racial hatreds in Los Angeles?

On this ground, I accuse the Jessups and the Jeffers of disloyalty. They should be condemned, not the Mexican-American youth. I accuse the Hearsts and Boddys as being un-American. They should be condemned, not the Eugene Dennis' and the Hollywood Ten. (They would be too if we lived in a sane world.)

And they are the creatures—may their tribe decrease—who, to quote Jessup again, want to "make our youths better citizens"—by killing them! (Quite a novel approach, eh?) Washington, Lincoln and FDR must be hiding their souls in shame—as Hitler is delirious with joy.

The best thing for the education of America's youth would be the removal of the Jessups and the Hearst's from any position of influence in American life.

Correction: In last week's column, the last sentence in the third paragraph should have read "This was a visible process—you could see the people glow and grow in his magnificent presence." Sorry.

[fol. 243] THE OTHER AMERICANS - march 8, 19

So much of the public's attention has been directed this past year to affairs in Europe and Asia that it is easy to

overlook the nations to the south of us and the importance of our relations with them.

With the announcement that there is to be a conference of 20 Latin American nations in Washington, it is well to review briefly the conditions in these lands. Particularly since the obvious purpose of the meeting is to pressure these nations into giving greater support to United States aggression in Asia.

A veteran observer of Latin American affairs, Carlton Beals—who is a Truman supporter—recently asserted: "Except for the more reactionary and feudal circles, anti-American sentiment is greater today than at any time since our marine interventions."

The New York Times complains that the United States has received little help from Latin America in our "Korean campaign." Stanford University's Hispanic American Report affirms that the majority of Mexicans are opposed to sending military aid of any sort to Korea. And the association of Brazil's army officers has strongly criticized U.N. support of North American aggression in Korea.

The New York Post reports that Washington has decided that "Unlike the last war when Latin American troops were not used in combat they will be very necessary for this purpose in the next conflict." And the New York Times discloses that the State Department is "negotiating with Central and South American governments" for the importation of thousands of workers, many of them to be used in labor battalions attached to United States forces throughout the world.

Under the familiar and obscene cry of "fighting communism" the United States has deliberately encouraged the formation of the most reactionary governments in Latin America. Of the 20 nations invited to the conference, 15 have definitely fascist and fascist-like regimes . . . ruling about 110 million people.

S. G. Inman, former United States representative to Inter-American Conferences, has declared that the political liberties of these peoples, our neighbors, have been taken away. Fascism was encouraged by the United States at the last big conference at Bogota in 1948, at the same time the United States betrayed its promises of economic aid to

Latin America—which it made at the Mexico City conference in 1945.

United States Intervention

Beneath a smoke screen of talk about "assistance" the United States has followed the traditional policy of encouraging more economic domination of Latin America by United States investors. Of the total private United States investments abroad in 1948, the State Department reports that 36.3% were in Latin America. From 1940-48 there was an increase of $1.5 billion in United States investments there—a greater increase than in any area where United States capital is at work.

The State Department reports further that the income from these investments has been increasing steadily since the war. From 1938 to 1945 it amounted to $400 million a year. In 1949 alone it was $997 million. While the rate of profit on investment abroad is 17.1%, as compared to 11.1% on investments within the United States.

Since the end of World War II our government has been helping reduce the standard of living of Latin America—70% of whom are reported as constantly hungry.

The United Nations Monthly Bulletin found that the cost of living has risen greatly in that area from 1940 on. For example: Comparing the first seven months of 1950 with 1949, living costs rose 7% in Mexico, 12.5% in Chile, 16.3% in Bolivia, 55.6% in Paraguay. In the same period it rose 1.8% in the United States. (And we know what suffering that much of an increase means for us.)

The Inter-American Economic Affairs Journal warns its readers: "The cost of living situation is an ugly one with serious political possibilities." And The Nation Magazine published an interview with a distinguished South American who commented: "The awakening of the Asian masses has been the outstanding development of the first half of the 20th century. The awakening of Latin America may be the historic event of the second half."

A valuable source of information about Latin America is "Latin American Facts"—from which the above material was taken.

[fol. 244] THE NEGRO NATION - March 1, 1951

To help make the rich promises of American democracy come true for everyone, to help each of us live a full life, education is important.

By education we do not mean the thing which is perpetrated in our educational institutions. For the most part they provide only a mass of poorly related facts surrounded by evil prejudices, designed to keep us from becoming mature adults and responsible citizens of a democracy.

By education we mean the achievement of an understanding of the forces which have shaped our lives and the destiny of mankind throughout history.

Such education is rarely achieved in our schools, and then usually in spite of them. To gain the necessary understanding of history and of the means whereby we can control our destinies we must therefore depend on teachers and publications which serve the people. We must turn to books and writers who recognize that it is the people, not the ruling classes, who build nations—that *is it* only thru the people's efforts that mankind's hopes will be realized.

An excellent example is Harry Haywood's book "Negro Liberation." It is valuable not only for its truthful recording of the struggle for Negro liberation, but particularly for its interpretation of the ideas essential to an understanding of the problems of Negro liberation, the ideas which can be powerful weapons for our side in that struggle.

Idea of Nationhood

To illustrate: Haywood presents the idea of the Negro people constituting a nation within the USA, and that they can not achieve full freedom until they gain that status. If his idea is foreign to your thinking, consider the points Haywood makes—all characteristics of nationhood:

While 15 million Negroes are scattered throughout the US, 5 million are concentrated in the Black Belt—a stable community forming the majority of the population over a large area. This is a population larger in size than that of many nations now in the United Nations. They are tied together by many bonds, characteristic of modern nations—

transportation, communication and money systems, and social and religious organizations.

At the time of the American Revolution one-fifth of the population was Negro. In the compromises involved in the making of our Constitution they were excluded from participation in American life. The Negro people were betrayed again after the Civil War—and their hopes for democratic absorption into American life blasted. But, freed from chattel slavery, they were made ready for the appearance of economic classes among them—which is characteristic of all modern nations in a capitalist economy.

The economy of the Black Belt area is largely agrarian, backward like that of all colonial areas. This makes it, in effect, an internal colony of American imperialism—a condition typical of other oppressed nations.

The culture of the Negro has been developing for over 300 years—and he is the inheritor of a rich historical tradition reaching back to the dawn of history. All Negroes speak the same language.

Even if the Negro people wanted to integrate themselves in our national life, our economic, social and political system by its very nature would prevent them from doing so. This means that Negro freedom and equality will be won only in the struggle against Negro oppression.

Fundamentally this demands a fight for land and political power for the Negro people in the Black Belt—a fight for the self-determination of the Negro nation, the right of the Negro people to control their own life.

Such ideas may be new to many of us. They certainly are a challenge to all persons sincerely concerned with the struggle for Negro liberation and the fulfillment of American democracy to study and understand the idea of the Negro people as a nation.

CORRECTION. In last week's column, the reference to Alfred Krupp should have read "destroyer of humanity"—not "... harmony."

[fol. 245] Doctor DuBois vs. Killer Krupp February 22, 195

Dr. W. E. B. DuBois, great American scholar, outstanding historian of democracy, leader of the fight for peace, has

just been indicted by a federal grand jury in Washington as a "foreign agent."

Alfred Krupp, munitions maker, murderer and enslaver of millions, without whose help Hitler could never have devastated Europe, has just been freed from prison.

The rulers of this nation, self-annointed leaders of "western civilization, Christian morality, and world democracy," welcome the un-Christian, undemocratic Killer Krupp as an ally—and they persecute Dr. DuBois, representative of world culture and democracy.

They free Krupp and rearm the Nazis because they need the help of such creatures in the war being planned. Knowing they cannot expect the support of any good men and women in such a war, they sent their great mouthpiece Eisenhower to plead with the Nazis to "let bygones be bygones."

Washington, preparing for global war in the face of the opposition of all decent human beings, salvages the inhuman fascists everywhere—for these are the only ones who will favor such a war. In doing so, Ike's "gang" must eliminate all that a DuBois represents, for people like him will fight hard the attempts to destroy democracy.

The Administration must try to annihilate the people's leaders and their moral, political and cultural weapons. Remember how Hitler's lieutenant shouted: "When I hear the word culture I reach for my gun!"

Foreign Agents

Dr. DuBois vs. Killer Krupp—truly the battle of the century! They personify the two worlds which do exist today—the world of peace and democracy and the world of war and fascism.

It is very significant that the freeing of Krupp occurs at the time of the quisling war budget and tax program, the provocation of China, the threatened starvation of India, the recognition of Spain, the building of another string of bases around the USSR, the admitted failure of the Marshall Plan, and the continued aggression in Korea.

Related to these actions, the indictment of DuBois and the reinstatement of Hitler's financier prove beyond all

doubt that Washington and Wall Street have finally decided to dispense with further pretenses and to openly and brutally speed up its plans for world war.

It follows "logically" therefore, that they will consider Dr. DuBois a "foreign agent." A fighter for democratic principles is indeed foreign to an undemocratic war. Culture and art and humanity have no place in such a war. Such men and ideas are not only foreign to such barbaric plans, but a positive hindrance to them. So they must be crushed.

What particular blasphemy it is that the persecution of Dr. DuBois should occur at the time of Lincoln's and Washington's birthdays, at the start of Negro History Week. America's reactionaries, having tried for generations to destroy the record of the Negro people's contribution to America, now seek to destroy the scholar who has done so much to restore that history.

Dr. DuBois vs. Killer Krupp—the eternal fight between good and evil, between democracy and fascism. On which side would Lincoln and Washington be? Whom would they consider the foreign agents, the enemies of American democracy—Dr. DuBois? Or the men who beg the destroyer of harmony to help them destroy America?

[fol. 246] WAR AGAINST AMERICANS — February 15

President Truman has proposed that the taxpayers of the USA spend $71,594,000,000 during the 12 months from July, 1951 thru June 1952. This sum will be spent for the following:

1. Direct military expenditures	$41,421,000,000
2. International security and foreign relations	7,461,000,000
3. Atomic bomb developments	1,277,000,000
4. Defense production and controls	1,403,000,000
5. Civil defense, defense housing, etc.	948,000,000
6. Veterans affairs	4,900,000,000
7. Interest on the national debt	5,900,000,000
8. All other functions of government	8,284,000,000

The first five items, comprising 73% of the total budget, are directly for war. The sixth and seventh items, 15% of the total, are mostly chargeable to past wars. This

leaves just 12%—12c out of every dollar—for the normal functions of our government, for the administration of those programs (like social security) which attempt to serve the people's welfare. These are what Congress and the press call "non-defense" expenditures.

To finance this budget, Truman and his advisors propose a "tax-until-it-hurts" program to raise $16 billion during the fiscal year. This tax program has two chief features:

(1) A 4% increase in each tax bracket, starting with an increase from 20% to 24% in the lowest income group, which means an increase of one-fifth in the tax on working people. In the highest income brackets this same 4% means an increase of only one-thirtieth. In other words, a worker who paid $100 in taxes a year ago is now paying $120, and will pay $156 if the new tax bill is enacted. (2) A sharp increase in excise (sales) taxes—such as an increase from 7% to 20% in the tax on autos, from 1½c to 3½c per gallon on gas, from 7c to 10c per pack of cigarettes, from 10% to 25% in the tax on refrigerators.

In a nutshell, as the Bureau of the Budget has figured it, of the total government revenue for the period, 35% will come from direct taxes on individuals, 27% from direct taxes on corporations, 11% in excise (sales) taxes, 4% from customs taxes and such, and 23% from "new taxes." Big business publications, demanding that "we should tax consumption and not production," jubilantly declare "the excess profits tax . . . is much milder than business had dared to hope for."

What It Means

The Administration's budget is a war budget and its tax program is designed to finance that war—a war against the freedom-loving peoples of the earth, particularly the American people.

We have asserted in the past that if the American people permitted their government to make war on other peoples—as in Greece, China, Korea—such a government would in time make war on its own people. In fact, it would be compelled to do so, since without subjugating and exploiting the American people the Administration could not have the political power (freedom from restraint) and the resources with which to wage war on others. The foreign

policy and domestic policy of any government are truly one, simply opposite sides of the same coin.

Our government itself insists that its program is a war program—and its foreign policy is illustrated by its war against the people of Korea who sought to establish their own democratic government. That being the case, it is inevitable that U.S. domestic policy would be guided by the same purpose—as illustrated by its determination to drive down American living standards and to curtail our traditional liberties. The official figures prove it: more than 73% of America's wealth is to go for war and less than 12% to serve Americans.

Truman insists that there must be "equality of sacrifice"—and so working people not only have to pay most of the taxes and a greater increase in their tax rates, but they are hit again by the increased taxes on food and gas and other essentials. We will have less take-home pay and we'll have to pay more of that for the things we need to go on living. The dollar today is worth about half of what it was in 1939.

[fol. 247] The criminality of the government's war program—its determination to reduce our living standards to their lowest possible level—is proved also by its fantastic "price & wage controls." Prices of food and other essentials are "frozen" at their highest point in history, and wages at their lowest point in years—while "1950 witnessed the largest total profits in American business history," as Truman's Economic Council admits. Truman's personal hypocrasy is shown again by the fact he had authority to freeze prices since last fall.

The American people are not only being compelled to give their sons to a war directed against themselves, but they are being forced to pay for it in increased taxes and lowered living standards.

This is the program the same Truman describes as "the only realistic road to a world peace based on justice and individual freedom."

The financial pages of the L.A. Daily News are more accurate. They report that the government's war program is "conspiring to continue the super-boom. . . . One wonders what might happen if some event, now considered remote, should occur to reduce the threat of war."

[fol. 248] Negro History—and Murder – February 8, 1951

As the American people celebrated Negro History Week, the American government permitted the legal murder of 7 Negroes in Martinsville, Virginia.

As we honored the contributions of the Negro people toward the building of this great land—the American system of justice electrocuted seven innocent Negroes at the very moment it freed dozens of Nazi monsters about whose guilt there is no question.

While even Supreme Court justices refused to stay the execution of the seven Americans who had committed no crime—Eisenhower, shining knight of Western civilization, found it in his heart to offer wholesale forgiveness to Nazis guilty of the most barbarous crimes in history.

The American President can easily violate his oath of office and declare war on the colored people in Korea, sacrificing thousands of Negro soldiers in the process—but he could not find it within his vast powers to do the perfectly legal and just act of saving innocent men in Virginia.

The U. S. Senate can threaten the colored people in India with starvation for refusing to follow American leadership in provoking war with China—while it ignores the failure of American leaders of "world morality" to protect colored people in the South.

Wonder how the Voice of America broadcasts will explain this latest manifestation of the "American Way of Life"—seven human beings legally murdered to satisfy treasonous prejudice? This American way of life which the State Department insists must be adopted by all other countries. They will probably have a special broadcast stating that the awarding of the Peace Prize to Ralph Bunche in Stockholm proves how highly Negroes are honored in Washington.

Can there be any sharper exposure, than that given by the above events, the wide gulf separating the rulers from the people of America? How contempt-ous they are of our needs and aspirations!

The People's Answer

The presidents and clergymen, the justices and generals, may ignore the official murder of seven innocent Negroes, but the American people won't.

We know we can no longer expect any justice from those who are capable of such deeds. They have long since forgotten what justice means—they who defile the word every time they utter it. They have placed themselves outside the pale of humanity.

We know that we must depend only on ourselves for justice, and all else that makes a good life. We will have justice only when we fight for it, black and white together. We will produce the programs and the leaders to guide us to victory. We can do it, for we have done it before, again and again.

In the Civil War period we produced a Frederick Douglass, an Abe Lincoln, a Harriet Tubman. Their ideas and forces won. And it was Lincoln who said: "Without the military help of the black freedmen the war against the South couldn't be won." (We can add: Without their help the promises of the American democracy will never be realized).

And during the Reconstruction days that followed, it was the new freedmen, black and white, serving as legislators, educators and justices, who gave the South the most democratic government it ever had.

But the promises of that period were betrayed by the rising money power, and the achievements of the freedmen wiped from the history books taught our children. Just as today the same money power is betraying the promises of our victory in World War II, and is trying to erase from the recorded history of that war the contributions of Negro soldiers and civilians.

Yea, the present rulers may ignore the Negro genius, sweat and blood which have helped nurture this mighty nation—but the people won't.

For we will not only re-write the history books to tell the truth. Together, black and white, we will make history, and . . .

Justice will be done.

[fol. 249] TRUTH WILL RISE December 7, 1950

It is not surprising that there is so much confusion among people regarding world affairs or national problems in view of the way in which the press deliberately misinforms us. But from time to time they are compelled to tell a bit of the truth, if only to serve their own purposes—as when thieves fall out.

Three recent reports—from Korea, from Germany, and from Michigan—do much to illuminate conditions world-wide.

The dispatch from Korea to the New York Times reveals that though installed in power with full support of the UN, and with his opponents' "broken back," a certain Syng*ham* Rhee "has been unable to win support of a large segment of the population . . ."

Is it not pertinent to ask therefore: Since we knew the North Koreans did not want Rhee, and now our own observance says that the South Koreans don't want him, what becomes of the U. S. arguments justifying intervention in Korea to "support Mr. Rhee, the legal head of Korea, and to enable the Korean people to determine their own affairs"?

The reports from West Germany show that in two important elections there in recent days, the people decisively rejected the policy of rearming Germany. Where does the U. S. stand then with its fierce insistence on the rearming of Germany as essential to the defense of Europe and the "Western democracies"—when the people of France and Europe and even Germany are so violently opposed to it?

May it not be asked therefore: If the people in whose interests we say we are intervening spurn us and our efforts, does this not indicate that we are not serving their best interests—that, in fact, what we are doing is opposed to their best interests? That maybe what is being done is more in the interests of those who are forcing these programs on the others?

Specifically: It is reported that MacArthur, the general directing the Korean war, owns considerable investments in the Far East, as do other big financiers, in uniform and out. They also own large interests in West Germany and

throughout Europe. Might it be interpreted that those who are pushing the war are concerned about their investments? Their policy certainly isn't bringing peace and security to Korea and Germany. What then is its purpose?

On both possible interpretations of the war-mongers' motives, they are wrong. They have no more right in law or morals to use American lives and resources to try to dictate to other people how they shall shape their national lives (if that is their purpose)—than they have to use American lives and resources to save the investments of the Du Ponts and MacArthurs!

RULERS' PRIVILEGE VS. PEOPLE'S HOPE

The dispatches from Korea and Germany (and every other place) reveal that our rulers have no basic understanding of the forces operating in the world today. The hopes and aspirations of billions of human beings they count for nothing when weighed against their own profits and power.

Perhaps it is more correct to say that they do understand world forces, that they know the liberation movements everywhere are not "Red plots" but attempts of those peoples to run their own lives. But America's rulers simply will not accept what is historically inevitable since it constitutes a threat to their continued monopoly of profit and power.

Therefore, they must try to crush it, to turn history back. And I think that in their desperation they know they will not succeed, any more than did other tyrants in the past, any more than King Canute was able to stop the ocean waves from rolling over him.

Opposed as their whole program is to the interests of other peoples, it is even more opposed to the vital interests of the American people. What are we getting out of it—except mounting casualty lists, lower living standards and fewer civil liberties? And an evil reputation that may outlast the Nazis (the way we've been fondling them . . .)?

[fol. 250] The leaders of the nation must abandon the idea that the U.S.A. has been divinely chosen (even by MacArthur) to take on the "white man's burden." This is not the era of the American Imperialist Century—but the Cen-

tury of World Equality. It is in working for such a goal—peace on earth and equal access to the earth's riches for all peoples—that the true interests of the American people lie, not in insanely trying to subjugate other nations to enrich still more the privileged few in Wall Street and Washington.

How much longer do the madmen think they can get away with flouting the will of the world? Do they think the American people will continue to support them? Let them take notice of the signs of protest.

From Michigan last Sunday comes the report of the resignation of the chairman of a county draft board who said: "I could not be a party to forcing Americans to fight, freeze and die in the hills of Korea in a cause that is neither holy nor just. . . . I will do my best to support and protect my country but I cannot nor will I sustain nor support the national administration which does not practice the first principles of enlightened statesmanship."

That American, Leonard L. Case, will be remembered when MacArthurs and Achesons have long been forgotten.

[fol. 251] THE PROFITS OF WAR—November 16, 1950

Since history teaches us that the ruling classes of many nations have in the past resorted to war to "solve" the economic crisis into which their own greed and incompetence have plunged their countries, we asked the question last week whether this might have been a factor in causing America's financial powers to declare war at this time on the liberation movements in Asia.

In examining the USA's economic condition in the months preceding the intervention in Korea, we found that there were approximately 10 million unemployed in the land, that in some cities the percentage of unemployed was as bad as in the depression, that relief loads were increasing, that the level of income going to the workers was approaching the dangerous low level that preceded that 1929 crash, that a worker's real wages had dropped at least 12 per cent since 1944—and profits were the highest in history, and going up.

Other serious symptoms of America's economic illness just before the instigation of the Korean war were the following.

Small Business and Monopoly

Small business was feeling the crisis too. More and more were being wiped out. For the first time since pre-war depression days, more small businesses were being abandoned than were being started.

But monopoly was getting bigger and bigger, the nation's wealth was being concentrated in fewer and fewer hands. Of all the corporate taxable net income in the U.S., 13 per cent of the corporations received 90 per cent of that income.

It is not surprising therefore that the Federal Reserve Board found that one-third of all American families in 1949 spent more than they were earning—just to stay alive. Food consumption was falling—and food prices were still going up. While tons of "surplus food" were being stored in caves.

Sales, Production, Foreign Trade

What is especially significant about conditions preceding the Korean "gamble" is that the invading corporations were making the greatest profits in history—on a decreasing volume of business. Just imagine the profits they made on what little you did buy!

Retail sales were down 5% in 1949, from the previous year—though the national population had gone up 2%.

Industrial production had also declined 17% from December, 1948, to July, 1949, and economists were predicting a further decrease of 17% in 1950. Corporations were curtailing their investment in new plants and equipment by about 15%.

Foreign trade had fallen sharply, nearly 20% from April, 1949, to September, 1949. This was 30% less than the monthly average during 1947. The sharpest drop in imports during this period was from the Marshall Plan countries.

Summary

The U.S. Bureau of Labor Statistics reported in December, 1949, that the economic trend in 1950 would be down—with gradually rising unemployment, due to increasing productivity per worker and a falling consumer demand at home and abroad.

It was also reported that unemployment would be further

increased by declining production, and as industries introduced more "speed-up" and "incentive wage plans," etc. It was estimated that in 1950 about one million more persons would be added to the labor force.

Leon Keyserling, chairman of the President's Council of Economic Advisers, admitted in April, 1950, that the outstanding economic problem before the country was the "rising level of unemployment in the face of business prosperity." He warned that unemployment would reach 10 million in 1954 unless the nation's economy expanded each year.

Baxter's International Economic Research Bureau, a private agency, warned its wealthy customers as far back as August, 1949, "We are in the greatest depression in our history. Study the break-even point of the average American family in our cities today and you will find their plight even more serious than that of the agricultural population prior to the crash of 1929."

The United Nation's Economic Report, released in July, 1949, admitted in remarkably polite and guarded language that "A depression is developing in the United States . . . and as a result . . . a depression is developing in other capitalist countries. In non-capitalist countries these economic difficulties have not appeared."

[fol. 252] Can we conclude, therefore, that there was a relation between the economic crisis in the U.S.A. in the months preceding the outbreak of war in Korea and the manufacture of that colossal tragedy?

Correction: In last week's column, the statement that the national income rose 22% between 1949 and 1949 should have read "between 1945 and 1949."

[fol. 253]

The Profits of War

Part I— October 19, 1950

Before the start of the Korean War, total federal costs for all purposes were about $40 billion annually—of which some 75 percent were for war purposes, past, present and future. Now, because of our intervention in Asia, the annual cost of the war program ALONE is expected to exceed $40 billion—and the total federal budget will run over $60 billion, maybe $70 billion.

That is, if the current madness remains only the "biggest arms race in history"—as Business Week magazine calls it—and doesn't grow into a universal war. If it does, then the cost of that is any madman's guess.

These astronimical sums for war mean higher taxes. And where will these taxes come from? You're right, from your shrunken income and mine. Already the working people have been hit, just as a starter, with a $5 billion tax bill—as of October 1.

To demonstrate the characteristic "fairness" of these laws, the new tax takes 20 per cent more from an average worker than he paid in 1948—but only 13.7 percent more from a man with an income of $100,000. All this in addition to the unfair excise taxes which we have been paying.

These billions for war mean also higher prices for us, as you know. The U.S. Bureau of Labor Statistics, which issues official reports on these matters, has announced that its wholesale price index has risen 18 per cent since Truman threw our men and honor into Korea. The increase in retail food prices alone is increasing 2 to 3 per cent a month since the intervention. We are now paying 29.8 per cent more for food, clothes, etc. than in June 1946 (when OPA was killed) and 75.5 more than in August 1939. A rise of at least 5 per cent more is expected by the year's end. (All these are very conservative estimates.)

These tremendous sums for war mean less for welfare programs for the people. The forces who give Truman's Administration its marching orders are demanding cuts in "non-defense spending," as the Magazine of Wall Street calls it. And in case we don't get the point, they spell it out: those "functions and activities which are postponable"—public housing, compulsory health insurance, aid to education, et cetera.

The Economic Royalists

According to them, America's only reason for existence is to produce for war. Everything else is non-essential. And, running true to form, it never occurs to these "patriots" that they should pay a fair share, or any share, of the war tax burden—out of their swollen profits, now the highest in history.

Corporation profits have reached the annual rate of $35 billion before taxes, and $21 billion after taxes. They've never had it so good. And they've never fought so fiercely to keep from parting with some of it. They are fighting against any excess profit tax—with the help of Congressional leaders who are urging us to make all the sacrifices. The Senate Finance Committee refused to pass such a tax on the rich, but rushed through a "soak the poor" tax which we began paying October 1.

While demanding that we give up our sons and dollars to support the Truman-Wall Street gamble in Korea, these "patriots" are profiteering like mad. Even the Army is complaining of the high cost of making war these days—just since the oKrean war started the cost of arms and equipment has gone up 90 percent! Even medical supplies for wounded American soldiers! Rubber is up 95 per cent, wool 50 per cent, lead 40 percent, and so on ad nauseum.

Senator Gillette, chairman of the Senate Committee Investigating Price Rises, declared: "None is hoarding bread, yet prices have risen 1 to 3c a loaf, or milk, which has gone up 1c a quart or more."

The papers, you will note, have been blaming the unwarranted price increases on "the hoarders," meaning the handful of misguided consumers who've bought a few extra pounds of sugar—but not a word about the unprincipled speculators who buy and sell huge quantities of foodstuffs and reap enormous profits. They are just good businessmen.

While profits and the cost of living keep soaring, Truman refuses to establish the price controls Congress authorized. But he is considering wage controls. Not satisfied with the limitless loot they're getting from the government, the patrioteers are getting ready to force Congress to pass a national sales tax and an additional tax on any wage increases which labor may win.

All this, and the Korean War has just begun.

What's it all for—this astronomical spending and taxing, this shrill demand for the American people to reduce their standard of living. (Next week we'll discuss these questions).

[fol. 254] THE PROFITS OF WAR

Part II

October 26, 1950.

Last week we discussed the fact that the American corporations' white supremist war in Asia is raising the costs of our national budget by some $40 billion annually—providing that it remains only a "little war." We saw that the corporations' representatives in our government are sucking these billions from the sweat and hearts of America's working people—already the war bill amounts to a $4 weekly cut in the workers' take-home pay, while it has brought the corporations their highest profits in history.

It is clear to all who will see that as a result of the Korean War the American people are being asked to pay a very high price—for what? And that we are to be asked for even greater sacrifices—for what? We have a right to know why we are being considered to pay such a price again, a few short years after our great sacrifices in World War II. What will we get in return for a lowered standard of living and the corruption of the democratic way of life?

We demand the answers—particularly since a spokesman for America's ruling class, former Secretary of Defense Johnson, declared at the American Legion convention:

> "The taxation and military service we may have to bear to meet the present emergency may become a permanent and fixed cost on our price of freedom."

Sounds like one of Hitler's dictates, doesn't it? Let Johnson's collaborators in high places tell us why these mon-trous demands on our incomes, lives and liberties may become "a permanent and fixed cost on our price of freedom."

Barron's Weekly, the national financial voice of monopoly, entitled one of its recent editorials "U.S. Empire" and proclaimed: "American troops are fighting in Korea and are deployed . . . along the Rhine in an ancient and honorable task . . . whether we call this making the world safe for democracy, or saving our necks, or the maintenance of an American Empire . . . we may not need to draw on the

spirit of the White Man's burden (tho its extraction from the shelf might do no harm."

To which the National Industrial Conference Board, leading monopoly research agency, adds: "America has embarked on a career of imperialism, both in world affairs and in every aspect of her life. . . ." And Barron's Magazine responds: "The U.S. has inherited an imperial mantle as order-keeper of the world."

Did you ever see such delusions of grandeur outside an insane asylum? Somewhat alarmed, the Wall Street Journal, veritable bible of the elite, tries to caution its own madmen by saying: ". . . to assume that every non-Communist nation in the world is automatically to destroy democracy and must be saved from communism is to begin to arrogate to oneself the prerogatives of diety. It is to say in effect that the rest of the people in the world are irresponsible, incapable of judging between what is good and bad."

Whom the Gods Would Destroy

But there's no restraining them . . . for whom the gods would destroy they first make mad. . . .

The National Ass'n. of Manufacturers, thru its president, is reported to have told President Truman's Advisory Committee on Mobilization Policy: "This tension has to break sometime. . . . A preventive war would be one way to end this intolerable situation. Our country, and especially business, can't stand interminable mobilization."

While the Journal of Commerce, another authoritative monopoly publication, affirms that long-term prospects for just that sort of program seems to be good, describing them as "reasonably optimistic as to the 1951 outlook for securities. Such views are based also on the assumption that the armament program will continue . . ." And Moody's Stock Survey gives the assurance: "There isn't any chance of returning to where we were before Korea."

In the face of the world-wide yearning for peace, the vultures gloat over American bodies in Asia, and declare in their Wall Street Journal: "They all (Administration leaders) say that we need a shooting war, that for the task ahead of us a state of war is more desirable than a state of

peace. . . . When you begin to say 'Peace, it's terrible!' you come at last to say 'War, it's wonderful!' "

To which the most fitting expression of current cannibalistic thinking is given by their Dun's Review.

"Quite apart from its tragic aspect, the effect of the Korean crisis on business was salutary in so far as increased government expenditures portend an indefinite continuation of current high level economic activity. Business was more assured of stability in the economy . . . than at any time in the past few years."

There we have the answers from their own mouths . . . to why we are being asked to give up our sons . . . to take food from our children . . . to consent to a police state.

[fol. 255] THE PROFITS OF WAR

Part III November 3, 1950

Two weeks ago we discussed the obvious fact that the military expedition of American imperialists in Asia has increased our cost of living, decreased our liberties, and brought us higher taxes and death—while it brings the greatest profits in all history to the United States corporations.

Last week, in answer to the question, "Why are such sacrifices, and greater ones, being demanded of the American people?" the ruling class spokesmen told us: "The forces which control our nation are engaged in an imperialistic conspiracy to force other nations to "live our way" since we are the "order-keepers of the world.

Translated, this means that we have to smash in blood if need be the efforts of the world's colored peoples, and all peoples, to liberate themselves. Since this means war, they say, war is wonderful, and peace is terrible!

We come now to the third leg of the triangle, as it were: Why did the Truman Administration and the monopolies for which it is the agent decide to make war at this time?

Since history teaches us that ruling classes in the past have resorted to war to "solve" the economic crises which their own greed and incompetence have driven their nations into, we should examine the condition of the United States economy in the months preceding the intervention in

Korea last June. Let's look at some of the symptoms which generally reflect a country's economic health or illness.

Unemployment

In February, 1950, unemployment in the U.S.A. had reached 4,684,000—the highest point in nine years. Almost two million more than the year before, and it was growing at an increasing rate.

These are United States census figures, which notoriously underestimate the true situation always. They deliberately exclude workers who are "temporarily" laid off, part-time workers, and those on the fringe of the labor market (women, many Negroes, etc.) who are willing and able to work. The United Electrical Workers Union estimated that there were 1,483,000 workers in these three groups.

Official unemployment statistics also exclude those persons who are out of the labor force because of age or disability, but who could do useful work in a sane economy. These were estimated by the Federal Security Agency to number some 5½ million in April, 1949.

We may assert therefore that four months before the Korean war began there were at least 10 million unemployed persons in the United States. And, of the Negro labor force, 14.7% were unemployed, as against 6.8% for the non-Negroes.

In some major cities 25% of the labor force was unemployed in April, 1950—as bad as it was in the depression days. In California, Gov. Warren admitted to at least 474,000 unemployed last January.

Relief and Income

In Los Angeles County there were 52,033 persons on direct indigent relief last January, compared to 39,901 in January, 1949. As far back as June, 1949, a survey of 38 states showed that five had already put depression-style relief laws back on the books and seven cities had work relief programs.

When the workers' share of the national income falls too low, depression is inevitable. A Congressional committee reported that "In June, 1948, income for workers was 58.9% of the national income (compared to) the 55.9% level of

1929" which set off the big depression. (Imagine what it was in April, 1950.)

Between 1945 and 1948 the buying power of your wages fell 16%—the worst decline since 1914. This so reduced the nation's buying power that United States consumers could buy back only 70% of the nation's output—the lowest proportion in history. By contrast, national income rose 22% between *1949* and 1949, while net corporate profits rose 96%, and total wages only 16%.

But the real wages of workers in manufacturing industries fell 12% between 1944 and 1949, while the corporations averaged $1481 profits per worker in 1948 as compared to $470 per worker in 1939. Farmers' net income dropped 13% in the first nine months of 1949 alone, and the prices they were receiving were 20% below their post-war peak.

In the face of this sharp decrease in workers' income, the U. S. Bureau of Labor Statistics reported that the average family needed at least $57.50 per week to maintain a minimum standard of living (just to keep alive), last spring. But official statements showed that nearly half the American families had less than that to live on.

(To Be Concluded Next Week)

[fol. 256] Scot-sboro Boy - September 21, 1950

The appearance of the autobiography of Haywood Patterson—one of the victims of the un-American Scottsboro frame-up—would be an event of major social significance at any time. But its publication at this time—in the period of growing danger for all minority groups, the period of our war on the colored peoples striving for liberation—makes it an event of political significance as well.

Over the years I have read, and reviewed, many books—but never one so unnerving as Haywood Patterson's account of his long ordeal. It is a shocking, revolting, maddening account of the frameup of nine innocent Negro boys and their persecution in Southern courts and prisons.

Completely honest, this book does more to reveal the basic degeneracy of Southern society, does more to expose the fascist structure of that area, than almost all the "scholarly" research studies made of the "Southern problem."

The book is an especially damning indictment of the jails and jailers of the South, and of the entire U. S. penal system. At any other period the appearance of such a report of how human beings are being tortured in our penal institutions would so jolt the conscience of the nation that it would lead to a revolution in America's penal system.

In a saner society such a book would have an effect comparable to the reforms created in America's treatment of her mentally-ill by that other famous autobiography, "The Mind That Found Itself" by Clifford Beers. But where the rulers are intent on turning the entire nation into a vast prison, such a book will be buried.

For, more than anything else, Haywood Patterson's report of Negro life in the South exposes beyond rebuttal the hypocrasy of America's pretensions to following the democratic way of life, and to teaching it to other peoples. Those who have not yet learned such lessons themselves can hardly teach them to others. "Scottsboro Boy" offers dramatic proof of the contention that the "Negroes know fascism."

That is why U.S. rulers dare not let such reports out to other nations, particularly the colored nations. And why they make such frantic efforts to cover up their crimes by appointing the "token" Negroes to various honorary posts, even in the U.N.—the international organization which should be using its powers to bring justice to America's colored people.

America in Miniature

What "Scottsboro Boy" does in its story of the brutalization of human beings in Southern jails and chain gangs, the exploitation of prison labor to enrich corporations and public officials, the use made of the torture of innocents to further the political careers of bigots—is to present us, in effect, with a picture of capitalist society in miniature.

What goes on in the prisons is only a sharper, more concentrated version of what is going on outside all the time. (The worst thieves and murderers are not in prison). This prison society is the logical, inevitable, outcome of the larger "free" society which idolizes the dollar more than human life, which enshrines material "success," and has only contempt for all cultural and spiritual values.

"Scottsboro Boy" should be required reading in every school. Every public official and police officer—especially members of Congress—should be obligated to read it. And the Rankins & Lanhams & Byrnes should be forced to read it 100 times. A reading of it will help everyone understand Negro life and American history better.

In telling his story Haywood Patterson reveals himself to be a very brave man, a wise and sensitive man, a veritable mountain of courage. He is a man with a rare sense of humor, remarkable in one who has suffered so much. A proud man, with every reason for pride—for few men have achieved so great a personal victory over fate. The full power of Southern lynch society could not crush him.

His life thus exposes once again all the traditional lies about Negro "inferiority." He symbolizes the tremendous power and gifts the Negro people have to offer American life . . . and of which we have been criminally deprived so long by slavery and jimcrow.

By surviving the agonies of Southern "justice"—and telling the tale—Haywood Patterson has made a priceless contribution to the fight for democracy. The progressive forces of America have an obligation to protect him—as they helped save him—so that he can continue living, and fighting with us, live to enjoy the democratic privileges he has so richly earned.

[fol. 257] NEGROES KNOW FASCISM September 14, 1950

At each new manifestation of American fascism—whether it is the jailing of a famous author or attacks on the peace petitioners or the denial of the right to bail—there is a painful shudder in the ranks of those Americans who've drugged themselves with the deadly refrain: "It can't happen here . . . and if it does, they don't mean me."

It would be hilarious if it were not tragic. For it not only can and is happening here—but one of the major reasons for it is that the USA has had a longer and more violent pre-conditioning for fascism than probably any other nation. As "Exhibit A" to support this charge, look at the lives of Negroes among us. (Or, at what we did and are doing to the Indians and Mexicans.)

The Negro people don't have to have fascism defined to

them. They know what it is. They live under it. Every significant feature of life under the Nazis is true and has been true of Negro life under American white supremacy.

Take the unconstitutional (and subversive) laws recently passed to compel the registration of every American who doesn't agree with the knaves in public office. It is doubtful if such legislation will seriously affect the lives of many Negroes in our country. Unconstitutional laws have persecuted them since the Constitution was adopted. And as for registration, their color automatically registers them at birth for "special treatment."

Consider the concentration camps and crematoria of Nazi Germany, the masterworks of the fascists—whom our government is busy restoring to power. The inhumanities there shocked the world more perhaps than the other Nazi deeds. Yet, those Germans guilty of them had been ordinary and average Germans. How did they become such monsters so quickly?

In the modern history of Germany before Hitler, it is questionable that the Germans had been conditioned by such inhumanities as have been practiced by average Americans on Negroes in the South and elsewhere for generations—the thousands lynched, burned, blinded, violated, chain-ganged, buried in unmarked graves.

All America Threatened

With such prior "training" Americans should go far. We may ask whether the "strange fruit" of this training isn't being harvested in Korea, when even Life and Time magazines report on our atrocities.

Or contrast the daily life of Negroes in the U. S. with the treatment accorded non-Aryans by Hitler's hordes . . . the sub-human status assigned to non-Aryans, their segregation in ghettoes, their expulsion from political and cultural life, the humiliation of their children, the denial of jobs and food and medical attention and education—the denial, in fact, of life.

Is not each and every evil face of fascism listed above true of the Negroes' existence in America? Is it not proved in the Negro child's life expectancy, shorter by at least 10 years than the others?

All of this, and more, is in store for all Americans if we do not stop the drive to total fascism now being accelerated under cover of the Korean war.

One way of describing what is happening to the rest of decent America today is to say that they are all being given a taste of what's it's been like to be a Negro in our democratic land. (And the chorus intones: "This is only the beginning . . .) It may be asserted that this would not, could not, be happening if white Americans had prevented it from happening to colored Americans.

There has been a vile perversion in our national thinking that the inhumanities heaped upon our Negro neighbors affected them only: A parallel perversion exists in the notion that the official hounding of progressives hurts only the progressives—that constitutional rights are being denied "only a little" to "only a few" people.

The truth is that democratic America is paying a grievous price for the sufferings of the Negroes—as she is for the persecution of her progressives of all colors. A nation can no more be "just a little bit facistic" than that certain young lady could be, as she told the judge, "just a little bit pregnant."

All Americans today must identify themselves with those of our fellow-citizens who are being persecuted. Each parent must see his child in the face and future of the colored child. Each one of us must see our fate, our country's fate, in the fate of America's democratic citizens. We must do so to enable us to stop fascism's advance.

We must never forget Walt Whitman's warning: "When liberty draws not the blood out of slavery, then slavery draws the blood out of liberty."

[fol. 258] WHO DO THEY THINK THEY ARE?- September 8, 1950

There can be no denying the fact that the United States of America is more powerful now than ever in her history—and that in certain respects she is the most powerful nation in the world. Nor can it be denied that the USA today is the most fear-ridden nation in the world. All its mighty power seems to offer little comfort. Why?

Our country emerged from the victorious war over fascism the most favored nation on earth. None of our cities

had been devastated, our industries had multiplied their productive capacity, we had lost comparatively less of our manpower than any of our allies. The stage was well-set for an era of abundance and greater freedom.

Yet—five short years later this great vision is maggot-ridden, destroyed: This most powerful nation, which promised so much, is afraid of its own shadow, its honored name is blackened wherever honest men live, its great strength is being dissipated in doomed ventures over the globe, its civic and social life is poisoned by an officially-inspired inquisition, the unity and pride of her people are being undermined—and her "leaders" are an immoral, terrified and desperate crew. Why?

Throughout the country, in our Capitol, in Michigan, in Georgia, in California, duly elected officials, sworn to uphold the Constitution and the Bill of Rights, are obscenely competing for the dishonor of betraying that Constitution and America's heritage. In Washington, Administration leaders join with outspoken enemies of democracy to secure passage of the Mundt-Ferguson-McCarran-Hobbs bills which would legally establish fascism in the land of Jefferson, Lincoln and F*RD*.

In L. A. County: the Board of Supervisors, elected "representatives" of the people, carry out a sneak attack on the people's rights—while contemptuously ignoring our real and urgent need for housing, adequate relief standards, fair employment practices, protection from storm-trooper police. (Which reminds us: Where was John Ford when the lights went out in L. A. County—this politician who has traded so long on his "liberal reputation"?)

In the L. A. City Council the same crimes are committed. Which proves once again, as it has been proved daily throughout the world these many years, that it is those in high places who are the quislings, betraying their trust and their nation. While it is the common people and their spokesmen—the Reuben Borroughs, the Margie Robinsons, the Paul Majors—who fight unrelentingly for the people's needs and rights.

It is true, as the treacherous press and radio and courts proclaim, that there is a subversive conspiracy in the land to destroy democracy. But it is not true that this Fifth

Column works so secretly. Many of its members are conspiring out in the open, with official encouragement, in the halls of Congress, in the boardrooms of corporations, in the legislatures of the states, cities and counties.

They Fear the People

Life has taught us that the really strong man doesn't have to go around always threatening others to prove his strength. The truly wise man doesn't feel compelled to convince everyone he meets that he is wise. The truly just man doesn't find it necessary to prove a thousand times a day that he is just.

Isn't it obvious therefore that what our misleaders, power-mad military and greedy financiers, are proving by their threats and attacks is not how strong they are, but how weak they are? Are they not demonstrating that they have no faith in their own propaganda and policies—for which they are asking us to give up our liberties and lives?

Isn't it obvious that this insanity is an effort to cover up their miserable fai-ure to solve our nation's problems—that it is a frantic attempt to escape the people's wrath?

Having failed in their global gamble to "contain Communism" they are trying to contain the American people and American democracy—which, as is evident, has been their primary goal from the first. Certainly one major reason for the Korean war was to provide an excuse to speed up (expedite) their war against the people of America.

Can any intelligent person believe that—in L. A. County, for example—where there is almost official immunity guaranteed any cop who kills a Negro or Mexican, the Board of Supervisors is "defending Americanism" and serving you and me by passing laws (in secret) to prevent us from thinking and holding free elections?

Who Do They Think They Are?

Dare they tell free Americans that it is illegal to speak and write and vote freely? Do they believe that they are above criticism—that the criticism of a Jessup who urges the killing of our youth is unpatriotic? This is the disease of dictators!

Our reply is: Just as we refused to collaborate with German and Japanese and Italian fascists in the last war, we will continue to defend America by refusing to collaborate with American fascists!

[fol. 259] The Minorities And The Majority

It must be one of the major ironies of history that in the U. S. A., the democratic nation in which the minorities have always been considered "inferior" by the majority, it is the members of the embattled minorities who are the most active fighters for democracy.

It is the Americans of Negro, Jewish, Mexican, Slav, Irish parentage—and all such—who will save democracy. For the members of the "superior" white majority seem to have given up the fight with little struggle, and are accommodating themselves to creeping fascism.

It is the Americans whom bigoted neighbors have for generations subjected to violent discrimination, prevented from living full lives in dignity, and to whom they have brutally denied the opportunity of contributing their utmost to our nation's growth—who are now safeguarding that nation and who will, in the process, save the lives of many of their *prescutors*.

This, of course, has been true in a measure since America was founded—from the day of Crispus Attucks to Harriet Tubman to Paul Robeson. It is symbolized in the lives of a Justice Brandies and a Congressman Marcantonio. It is dramatized by the lives of the nameless millions who thru the years have cleared our forests, built our industries, created our culture, and fought our wars.

We're For Peace

What brings this forcibly to our attention now is the participation of our minority Americans in the fight for peace. In Los Angeles, for example, wherever you go, it is we of the minorities who are in the forefront circulating the petitions and speaking up for peace. It is in the *the* minority neighborhoods that the men and women, young and old, are readiest to sign the petitions. They are not afraid. But in the "superior" white neighborhoods too many of the people shy away from the peace campaign as from the plague.

In every sector of the home front's struggle—be it a battle for FEPC or the life of Willie McGee, a fight against the Mundt-Nixon bills or for democratic trade unionism and a people's political party—it is the belittled citizens who are the better citizens. We of the minorities are the first and boldest fighters for the welfare of our nation.

And bravest of the brave are our women. Victims of the threefold curse—exploited in this society as women, as workers, as minority people—they are the outstanding leaders, the tireless soldiers in the ranks, the wisest counsellors in our democratic people's army. The role of their women in the Negroes' never-ending fight for liberation is a prime illustration of this. It is to our women that we and the world will owe our victory.

We'll Save The Peace

Yes, to us of the minorities has fallen the task again of defending and strengthening the democratic foundations of our land. That is the fact—the reasons for it can be discussed another time.

The term 'minority' in this situation is really inaccurate. For the 'superior' whites (compared with the total in our minorities) are no more the true majority in the U.S. than they are in the U.N.—where, it is pertinent to note, a majority of votes in the Security Council "legalized" the intervention in Korea.

The vote of the Norwegian representative (of only three million Norwegians) who favors bloody intervention is considered equal to that of the Soviet delegate (representing 212 million people) who opposes the intervention. The USSR, India and China, comprising half the population of the world, have less than 10 per cent of the votes in the U.N. That is why the U.N., formed to speak for and defend all nations, could be turned into a weapon for global white supremacy.

Yes, all over the world we are setting an example to the "upper" classes in all the elements of decency, honor, wisdom and courage. Everywhere we are exposing the hollowness of white "superiority"—the centuries-old lie in the domination of the white "majority."

The inescapable outcome, of course, is that we of the minorities are becoming the majority in fact, the majority

in power—as we have been the majority in numbers. We will inherit the great world we have built.

[fol. 260] WHAT'S WRONG WITH PEACE? August 25, 1950

Has American history ever witnessed a more immoral episode than the directed attacks on the campaign for peace?

There have been other periods when those in control of our nation have sunk to the most hellish depths of infamy—for example, in their support of slavery and in their betrayal of the freed slaves during Reconstruction days—but never a more immoral period than now when they want to make peace itself un-American.

In H. (for Hoover) Truman's "Christian nation" the Prince of Peace, the founder of Christianity, would be jailed for treason.

Such a hate-filled war on peace and brotherhood could be engineered only by those who have lost all faith in their fellowmen and democracy, who have lost all civilized attributes, who have ceased to be human beings. They have become beasts. They are fascists.

The bi-partisan smearing of the peace campaign, abetted by those who have pretended to moral leadership in our land—yea, even the Federal Council of Churches of Christ, the Synagogue Council of America, the National Catholic Welfare Conference—and have Judas-like betrayed our trust, is of course an inevitable development of the cold war.

We can see that the silencing of the liberal voices on the air, in the press and movies, the jailing of trade unionists and leaders of the Communist Party, were necessary to the bi-partisans to kill opposition to their war drive. Now they want to crush those who still have not been intimidated.

A government which commits itself to a domestic and foreign policy based on brute force—material power and an assumed monopoly of atom bombs—will inevitably try to outlaw peace. Now it is attempting to belittle the dangers of its own superweapon in order to prepare us to accept more readily an atomic war.

The very casualness with which government spokesmen and owners of the press and radio are offering us advice on "what to do when the A-bombs fall" is more than horri-

fying. It damns them as forever outside the pale of humanity. They have already given us up for lost . . . !

PEACE IS GOOD FOR PEOPLE

Why don't they work as hard for peace? What have the people of America to fear from peace? Would peace destroy our sons and our cities? Would it deprive us of homes and jobs? Would it make the lives of our Negro and Jewish and other minorities more insecure? Is it not clear that the best and highest form of Americanism today is to campaign for peace?

The peace-haters say they would favor peace, if it were an "American peace"—and they damn the present peace campaign as "Communist inspired." While we're not aware that peace too has become a Wall Street monopoly, and it is difficult to understand that there can be an American peace different and separate from world peace, we must answer them with: So what!

While the facts show simply that a group of freedom loving men and women gathered in Stockholm to initiate the peace campaign, and needed no orders from Moscow to love peace—we must assert: So what! What if the Soviet delegates participated in that conference? Does that make peace unclean? If the Soviet leaders want peace, must America's officials automatically react with war?

If our leaders are so concerned about the USSR's support of such movements, why wasn't the world peace campaign American-inspired? What a wonderful thing this could be! Wouldn't it be a more certain way to win us moral leadership of the free peoples than to arm their oppressors everywhere, imprison our best minds, and call on our youth to form an "army of killers?"

So what if the Communists prefer peace! We want peace too—and the more who demand it the surer we are of getting it! We're sick of this national insanity which dictates that we don't dare do a decent thing if the Soviets are doing it—or if we do such a thing we must justify it by claiming it will help "stop those —— Russians!"

We reject this suicidal corruption of the American way of life. We reject this phony Americanism which can stom-

ach the police slaying of Negroes and the freeing of Nazis for "good behavior" while inspiring force and violence against good Americans who work for peace.

[fol. 261] NEW CRUSADERS

We charge the haters of peace with Satanic sacrilege in declaring—as does a Drew Pearson—that our drive to war, our creation of another Spanish tragedy in Korea, is the American way of practising the teachings of Christ, a new crusade.

We proudly claim that it is we who circulate the petitions and speak up for peace who are the new crusaders. We boldly join with the 260 million good men and women all over the world who have already signed the peace pledge. For ours is the way of life . . . and in the spirit of the faith which the killers of peace betray, we promise:

They shall not be forgiven
For they know what they do!

ACCOMPLISH YOUR MISSION!
SIGN THE PEACE PETITION!

[fol. 262] SUCH A VICTORY! August 11, 1950

The boastful accounts of U. S. "victories" over the USSR in the current United Nations meetings reminds one of the French general who lamented, after one of his country's wars—which France won, but lost much of her manpower and resources in the process: "Another such victory and France will be no more."

The press reports that the U. S. "stole a march on the Russians" by proposing condemnation of North Korea as the first item on the agenda—that this was "calculated to provoke the Russians"—that this move had the "obvious purpose of putting Russia on the defensive . . ." When the Soviet's effort to expel Chiang Kai-Shek's hatchet-man was defeated, we are told that "The Soviet delegate took his defeat calmly."

One may well ask, Who was defeated in this action? Was it Mr. Malik who sought to obtain representation in the UN for the Chinese Republic, which must be seated sooner

or later? Or, was it Mr. Austin who used American power to defend the Chinese traitors, whom his own State Department has damned as corrupt and undemocratic?

Whose action was calculated to uphold the charter of the UN and save it as an instrument for peace and justice? Malik's, who urged the admission of the new China so as to rebuild the only kind of UN which can achieve a constructive solution to the Korean tragedy? Or Austin's, who fought to perpetuate the dishonesty and illegality of the UN's conspiracy in Korea?

Sense of Guilt?

Why didn't the American representative answer Malik's charge that we are guilty of aggression in Korea? Surely this charge reflects on our honor and should have been met as least as bravely as Austin defended the murderer Chiang. Some people may think that all this argument over the agenda and Chiang was a diversion to keep from answering that charge. And others will wonder if the calculated efforts to provoke the Soviet Union is the best way to prove the sincerity of our professed aims in Korea.

What kind of satisfaction or moral prestige can we derive from a purchased parliamentary victory? Our paid clique can give us majority votes from now till doomsday—but the people whom they are supposed to represent will not. It will be doomsday for our planners if they build their policies on any contrary assumptions.

What is it we are so hotly defending in Korea anyway? Our officials say it's the South Korean government, "a truly democratic government" in the eyes of the bi-partisans who built it. (Gov. Warren says it's really Russia we're fighting in Korea.) But the South Korean government was defeated in the election held just a month before it provoked civil war. Syngman Rhee's party got just 22 seats (11%) out of a total of 209 in the Congress. This despite Rhee's use of troops and terror and arresting opposition candidates.

If it's not the government we're defending, then it must be the Korean people. But, can we say we're defending them when they so decisively rejected the Rhee gang (consisting of traitors and Japanese collaborators) which we foisted upon them? The refusal of the vaunted South Korean army

to fight and the widespread resentment against our intervention in their civil war gives us the answer.

The Simple Truth

We are left fighting the Korean people—with the arrogance of the white supremecists. We are fighting a people with a recorded history of 4000 years—who used moving metal type for printing 50 years before Gutenberg, who built iron-clad ships 300 years before we made the Monitor and Merrimac. These people our laws say are unfit to become American citizens—and we claim we are at war to defend their liberties.

The simple truth is that this Christian nation (as Truman describes it) is trying to take up the unholy "white man's burden" which the British, French and Dutch tyrants are no longer able to carry. This is a futile effort to reverse the course of history.

[fol. 263] That this is the purpose of our Korean gamble is proved by Truman's original orders to intervene in Formosa (which even the British are objecting to). It is proved by the announcement that "The U. S. has decided to give full diplomatic support to Nationalist China"—which the U.P. dispatch calls "a diplomatic about-face." And it is proved again by the press trial balloons on August 5 stating that MacArthur believes that "American efforts in Korea will be useless unless the U. S. is ready to meet the Communist challenge everywhere else in Asia . . ."

This time MacArthur isn't just shooting his mouth off. Are we prepared to go to war with 450 million Chinese, the 80 millions in Indo-China, the many millions more throughout Asia? Is the United States prepared to take on all the colored peoples of the earth—who constitute two-thirds of mankind? Has the slave-holding mentality of the South become the basis of America's foreign policy as well as its domestic scourge?

What madness is this. Do our Forrestals in the government think they will succeed where all other tyrants have failed—even with their atom bombs? Do they think that the oppressed millions, who at last are building a better life for themselves, will welcome us, will welcome a new op-

pression? They will fight. And the lessons of history show that we would lose.

Surely, the energy and lives and resources which we are expanding in this Asian adventure are worthy of a far more honorable cause than the evil Chiangs and Rhees and the white man's ancient curse.

[fol. 264] LOTS OF PLOTS June 4, 1950

Contempt for the intelligence of their countrymen is a characteristic of fascists everywhere. Arrogant with the power they derive from control of the nation's economy and government machinery, especially the police and armed forces, they feel that the people can be cowed into accepting the rulers' ideas and evaluations of every situation—as well as their standards of conduct.

The rulers come to believe their own propaganda about their infallibility. Drunk with a sense of superiority, they assume that we will accept their words and opinions as gospel truth because they utter them. They think their power alone is enough to convince and lead the people, that they don't have to be concerned about logic or elementary honesty or fair-play.

Nothing proves this so strikingly as their desperate attempts to discover plots, any kind of plots, anywhere, to "justify" their cold-war preparations and hot war maneuvers. Let us look at only a half-dozen of the more recent ones—each an insult to our intelligence and evidence of their moral bankruptcy.

Plot No. 1

The efforts of decent Americans to eliminate Jimcrow and second-class citizenship and correct the injustices heaped on the Scottsboro boys and the Willie McGees are nothing but Communist plots to discredit the American way of life—to create issues so that the Communists can appear as defenders of democracy.

Another version of this one is that in resisting storm-trooper attacks—as in protecting Paul Robeson at Peekskill—the responsible citizens there were incited by the Reds (who really "planned the attacks in the first place") because they wanted to become bloodied martyrs.

Plot No. 2

The momentous world-wide peace campaign is an "insidious Red plot to soften up Americans, so as to leave us defenseless in the face of an imminent invasion by the Reds." (In history's book the Washington-inspired campaign to discredit the global peace movement will be recorded as one of history's most immoral acts.)

According to the hot-warriors, the response to the peace drive couldn't possibly be an expression of the people's longing for peace and life. The bi-partisans' counter-attacks couldn't possibly be motivated by fear of peace sentiment at a time when they want war.

Plot No. 3

Whenever Washington, Wall Street and Winchell want to sink more billions into armaments they can find convenient plots to generate a war scare—Soviet subs in the Los Angeles River, Soviet schemes to blow up the Panama Canal or to invade Iran or steal our atomic "secrets." This couldn't possibly be an effort to bolster our sagging economy or equip us for foreign gambles.

Plot No. 4

"Red Imperialism" is ceaslessly expanding, threatening to engulf the earth—which explains why the USA now dominates with guns and ships and dollars more areas and bases and ports around the globe than any nation in history. We are protecting these places from the Soviets—without a thought of exploiting their natural resources or their people.

An extension of this plot is the charge that the efforts of colonial peoples in Korea, throughout Asia, Africa, South America, to free themselves is directed by Moscow—and couldn't possibly arise from the desire of these oppressed men and women to liberate themselves, as American colonials did in 1776.

Plot No. 5

The USSR is forcing the USA to spend billions for armaments for itself and to arm the world's reactionaries

in a deep-laid scheme to bankrupt America. (You figure this one out!) Innocent, powerless, bi-partisans! All their actions merely reactions to moves dictated in the Kremlin. We have no initiative, no freedom of action, no foreign policy of our own.

Plot No. 6

There is a dark plot to overthrow the government of the United States. So the leaders of the Communist Party of America are imprisoned, along with many other Americans (whose numbers will increase) who don't agree that the bi-partisans are the wisest, most honorable, most patriotic Americans. The jailings couldn't possibly be due to the fascists' frantic fears of permitting any open opposition to their plans, to their fear of Americans learning the truth.

FOR ONCE THE BI-PARTISANS ARE RIGHT. THERE IS A PLOT TO OVERTHROW THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES BUT IT ISN'T THE JAILED AMERICANS WHO ARE THE PLOTTERS . . . . . .

[fol. 265] The Greater Loyalty July 28, 1950

Always in a testing time the timid fall away. It is easier for them, at times such as the present, to seek the seeming safety of silence than to continue fighting for their principles. To be silent is easier than to buck the hysteria and threats of evil men in power.

As such times the faint-hearted grasp eagerly at the thinnest thread of plausibility or "legality" in the arguments of America's quislings in order to justify their own abandonment of the obligations which American citizenship and humanity place upon them.

It is a sad spectacle to see them, now that the cold war has become hot, rushing in to support Truman's intervention in Korea with the argument that the concept "My country right or wrong" takes precedence over any moral or ethical obligation.

Or, if they still cannot stomach the Potomac Pilates, they seize upon the claim that since the castrated UN sprinkled the blessed water of its endorsement on the Korean adven-

ture, then falsehood is truth. They convince themselves that thus their own transgression is sanctified—and they don't have to think or feel any more.

To consider loyalty to America as identical with loyalty to Truman, Dulles & U. S. Steel is, to me, the ultimate in sacrilege. Truman, Dulles & U. S. Steel—saboteurs of Americans' constitutional liberties, of peoples' self-government everywhere, of the hopes promised mankind by victory in the last war! Lynchers of Americans and engineers of the doctrine of guns over butter!

Is this what America means today?

It is significant that Truman & Dulles are leading religionists, who insist that ours is a Christian nation—tho the Constitution says otherwise. Both repeatedly proclaim their religious convictions—and just as frequently violate them. They use appeals to religion to camouflage their sins.

The other day Holy Harry told the Baptist World Congress: "The nations of the world . . . cannot survive materially unless redeemed spiritually . . . what we need today is a revival of religion and a rededication of this nation . . . to the undying truths of the Christian religion."

This from a man who loves not his fellowmen but threatens them with atomic hell, who is violating our Constitution and the sanctity of our homes by sending our sons to death in an inhuman gamble!

Is this hypocrisy Americanism today, or "Christian truth?" Or is it serving Mammon and Moloch? Can any sane person be "loyal" to such men, such sinfulness?

Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people. Loyalty to America today, therefore, must mean opposition to those who are betraying our country's traditions, who are squandering her manpower, her honor and her riches.

Would it not be greater loyalty to America today to call for the expenditure of $10½ billion to make schools and homes and hospitals and jobs for Americans than to waste it in foreign intervention?

To embrace the doctrine of loyalty to a current pack of

office-holders as a means of saving one's self is to repeat the suicidal conduct of those Germans who refused to oppose the Nazi drive to power. They claimed that since the Hitler government was the government of Germany, whatever it decreed was "legal" and therefore a German citizen had to obey.

While in Germany during the last war, I knew a German radio technician who told me one day: "You Americans should have come here ten years ago—to save us." I asked "What did you do to save yourselves?" He muttered "What could we do? The Nazis killed everyone who protested." At which I exclaimed "They killed many of you anyway—and for what? If you'd fought back, more of you would have lived, and you might have stopped Hitler and prevented the war." He just shrugged.

[fol. 266] Will Americans talk like that German, ten years from today—or five? Who will come to save us?

Certainly it is harder to fight back than to be silent. (Did anyone ever promise you that being a good citizen is easy?) Whatever silence or collaboration gains is only fool's gold. For there is no real security in either.

Today you may get by just for keeping silent. But tomorrow you will feel impelled to extol the Bi-partisans' program. And the next day you will be forced to give material evidence of your affection. And the day after that you will have to join in their war against the American people—or you will pay the full price too, along with others who wouldn't kowtow to them in the first place.

No democratic American can be safe today unless we are all safe. Only if all men and women of goodwill stick together bravely will our nation be secure. To fight the Bi-partisans' program today is the highest test of loyalty to America.

They can't jail us all. They may succeed in driving many of the best Americans into exile—to form, on a friendlier soil, a government-in-exile for a Free America. But this will not happen if we fight back now . . . as heroically as Americans fought the British and their Tories in our first revolution . . . as boldly as Americans fought the slaveholders and their Copperheads in our second revolution . . .

[fol. 267] IF I WERE PRESIDENT July 21, 1950

Every American, they say, can aspire to the Presidency. We know this isn't true—but, we have all hoped, at some time or other, that it would come true for us, if only for a little while. Then we'd "show 'em!"

If I were president, this is the program I would urge upon the people and the Congress, at this time—in the conviction that it would meet the needs of all Americans and enable our nation to make its greatest contribution to the security and peace of the world.

For convenience sake only, the following proposals are divided into "domestic" and "foreign" programs. We know there is no fundamental difference between the two: they are simply opposite sides of the same coin. Any government which is reactionary in its foreign policies (as is the Truman administration in Korea) cannot be progressive in its treatment of Americans at home (observe the repeated double-cross on FEPC.). A government which truly serves the welfare of its own people will be furthering the welfare of all nations and world peace.

Domestic Program

1. *Immediate 25% wage increase, and one dollar minimum wage, in all industries.*

An average raise of 25c an hour would pump $19 billion in purchasing power into our sick economy. This would lead to increased demand, more production—and about 4 million new jobs. This raise would have to come out of profits, and would leave the corporations piling up profits at the pre-war rate.

2. *Pass FEPC!*

3. *Thirty-hour week with no reduction in pay.*

This is urgent today, with about 10 million workers wholly and partially unemployed, with the great increase in workers' productivity, and with the soaring profits being created by the workers' eight hours in the factories.

4. *Repeal Taft-Hartley!*

5. *End inhuman speed-ups in the factories.*

Workers must be given a more responsible share in the management of industry. Didn't the labor-management committees during the war prove the great value of this?

6. *Restore and increase veterans 52-20 allowances.*

7. *Immediate rent freeze.*

Restore rent control to areas already decontrolled, and make it more effective.

8. *Liberalize all relief allowances.*

9. *Expand the social security programs.*

Increase unemployment insurance to at least $40 weekly nationally, to last as long as the worker is unemployed. Extend its coverage to all workers. Ten year hospital construction program. Increased federal aid to education. Such a program would of itself raise the living standards of millions of Americans—and make more jobs.

Help Workers and Farmers

10. *Help the small farmers with such measures as the Brannon Plan.*

Distribute surplus foods to the needy. Stop the profiteering of the food trusts.

11. *Help the migratory workers.*

Establish minimum wages, regulate their contractors, extend workmen's compensation and the social security laws to cover them, Etc.

12. *Eliminate the whole "loyalty oath" and witch-hunting programs.*

Pass civil rights laws—and use the federal troops if necessary to enforce them. If we can send the U.S. Army and airforce to Korea to "save their freedom," why not use our forces to ensure freedom for Americans?

13. *A vast public works program.*

Two million homes a year. Slum clearance. Regional planning authorities in all the major river valleys (like TVA). Flood control, etc. Highway improvements alone would furnish 950,000 jobs for ten years. The production and marketing of goods purchased by the people so employed would provide over one million jobs for ten years.

[fol. 267a] 14. *Develop atomic energy for peaceful purposes (No A or H bombs!)*

Atomic power could lower the tops of mountain barriers which prevent the passage of rain clouds—and thus make fertile millions of desert acres in California and all the West.

15. *Break monopoly control of America's economy and political life.*

Nationalize the public utilities, steel and armaments industries. Eliminate withholding taxes on all incomes of less than $5000 yearly, and increase taxes on large profits.

16. *Stop the militarization of our nation.*

Remove the military from civilian and diplomatic posts. Reduce the arms budget. No peacetime conscription.

FOREIGN PROGRAM

17. *Stop the cold-hot war.*

Settle the differences between the USA and USSR—the key problem of our time.

18. *Strengthen the United Nations.*

19. *Recognize the New China and establish trade relations.*

Stop trying to weld it into an instrument of U.S. world domination. Withdraw our forces from Korea. Cancel the Marshall Plans, the N. Atlantic Pacts, etc. If we really want to raise the world's living standards, let's do so through the UN.

This trade—and renewed trade with the Soviet Union and Eastern Europe—will create about 3 million jobs for us.

20. *Prevent the remilitarization of Germany and Japan.*

21. *Stop subsidizing reaction all over the globe.*

Let's help the growth of democratic people's movements, instead of trying to throttle them. Let American democracy support world democracy.

Such a program, it is true, would cost us billions of dollars—which would be an investment in our security and world peace. We are wasting billions in foreign adventures and armaments—and what are we, the people, getting out of it? More dead sons and sacrifices?

What is it worth to us to have a secure America in a world at peace?

Free Lawson, Trumbo, Dennis, Fast
or this year of freedom may be your last!

Write the President!

[fol. 268] IN HONOR OF THE AMERICAN REVOLUTION July 14, 1950

On July 4th—in 1776—the American people concluded a successful revolution against their British oppressors, and adopted a ringing Declaration of Independence which proclaimed for all ages ". . . Whenever any form of government becomes destructive to these ends, it is the right of the people to alter or abolish it and institute new governments."

On July 4th—in 1950—the inheritors of this glorious legacy were dying 5000 miles from America, in an effort to prevent the Korean people from achieving their revolution and their independence.

American troops were being used as the British used their Hessian mercenaries against us—in an open and doomed scheme to delay the inevitable liberation of a long-suffering nation, whose cause is just. (And irony of ironies, the land of jimcrow is using colored troops to shoot down other colored folk seeking their freedom!)

The Koreans have been fighting for their liberty for generations—against the hated Japanese tyrants and their own traitors, and now they must fight again, against the

Americans who came into their land as liberators! The Korean Independence News asserts: "Inflation, starvation and bankruptcy of the people, coupled with corruption and tyranny of the Syngman Rhee regime, have driven the entire people to the brink of revolution."

By their actions in Korea the officials of our nation—born in revolution—are denying another people the same right to revolt we claimed for ourselves and which our great men have declared to be the great tradition of democracy.

By their actions in Korea, U. S. officials have forfeited all right to our trust. They are deceiving and misleading us:

1) It is now clear that the war in Korea came as no surprise to Washington. At this late date we are told that for many months, and as late as one week before the S. Koreans launched their attack, the Korean People's Democratic Republic (with headquarters in N. Korea) made comprehensive offers for peaceful unification of the country.

2) The United Press reports from Washington that "The day-by-day widening of the scope and intensity of the American effort in Korea is arousing criticism here and elsewhere that Truman is withholding from the public available facts of the situation."

3) The Chicago Sun-Times claimed on June 30th that the Korean war was used by the Truman Administration to initiate an open policy of "armed intervention in the Pacific." This has not been denied.

4) On July 10th it is reported that the sensitive Truman may send to Congress "a plan for a new propaganda war against Russia to offset the Soviets' claim that U. S. aid in Korea is 'imperialist aggression'."

5) One day Truman told his press conference that there was no present need to mobilize the organized reserves. The very next day he authorized the armed services to draft men . . .

The Korean Gamble

So—Gambler Truman's bluff has been called and his play to "drive a bunch of bandits" from tiny Korea has developed into a war requiring the mobilization of a mighty nation's manpower and resources. What shame. What dis-

honor! If this doesn't turn out to be the great deception of the 20th century, it won't be far from it.

Historians will be amazed that the evil men who engineered this fraud were not impeached and driven from public life!

By initiating the policy of "armed intervention in the Pacific" American officials are betraying the best interests of their own nation as well as violating our solemn pledges during World War II to allow all peoples the right to set up governments of their own choosing.

All the Pentagon brass and Wall Street gold cannot prevent much longer the age-old need of the colored peoples—including our own—for security, freedom and justice. All the White House satellites and Yankee guns cannot much longer prevent the historically-necessary drive of the earth's oppressed—including America's Negroes—for land and bread and dignity.

[fol. 269] To try to reverse history is an ignoble as well as hopeless madness—as we should have learned in China. A fate similar to ours in China will strike us sooner or later in Korea, and wherever else we try it.

Above all, it seems to me, the Korean gamble exposes the complete bankruptcy of the Republican-Democrat cold war program. We were promised that the cold war would bring America universal moral leadership, would economically reconstruct Europe, would bring peace to the world. We have been deceived on all points. How can any reasonable person now have confidence in these misleaders?

Now that their policies have proved to be total failures, the bi-partisans try frantically to cover-up their treasonous incompetence and find scape-goats on whom to divert the wrath of Americans.

They can't give us jobs, so they offer us guns. They can't give us homes, so they offer us caves. They can't give us life, so they offer us death.

They hope to solve our inevitable economic crisis with a new war. (Did you read about the stock market falling at the mere suggestion there might be a peaceful solution in Korea?) But this time the drug of war won't work so well. It's been tried too often—and the crises are coming more rapidly and will last longer.

PROGRAM FOR PEACE

The only course for us all is to fight for peace even more selflessly than we did for survival in the last war. Sign the peace petitions. Get others to sign them. Write to the President. Get others to write.

Let us demand that Truman and the Congressmen—our servants, not our masters—drop at once their suicidal course and adopt one that is in America's interests. Demand of the President and Congress that we immediately:

1. *Remove all our forces from Korea.*
2. *Make it possible for the UN to function legally by agreeing to the admission of the new Government of China.*
3. *Arrange top-level discussions between the U.S.A. and U.S.S.R.*
4. *Agree to outlawing all atomic weapons.*

We must act now—or our own children, if they survive, will hate us for not having had the courage to safeguard their future. If we don't act for peace, our children will hate us because in exchange for all the wondrous promises of the American Revolution we will have left them only an atomized wasteland.

[fol. 270] TRUMAN, TELL THE TRUTH! July 7, 1950

Why are Americans dying in Korea?

That is 5000 miles from the USA, though on the very doorstep of China and the Soviet Union. What business have our troops there? Why are we at war?

Since the sole source of information about the outbreak of hostilities comes from the North and South Koreans—both of whom charge the other with provoking the conflict—dare we assume the S. Koreans are right? Isn't there at least an equal chance the other side is telling the truth? It was solely on the basis of the S. Korean stories you demanded action and the UN acted.

Is it possible the S. Koreans created the incident to bring in outside help for saving its tottering government—one that is as hated by the people as were the Japanese overlords? It is the S. Koreans who have been making war

threats, not the N. Koreans, especially since Syngman Rhee and his gang virtually lost the election in May 1950.

Impartial observers, reporting the corruption and oppression of the Rhee government, declare that it is a puppet of ours if ever there was one. Do you think it would dare to make a war-like move without prior approval of your administration? Can it be that Dulles, Johnson and Bradley, who conferred with them just before the battle began, gave pledges of US support? Is it a coincidence they were there at the time?

By what authority did you plunge us into war? Did you not exceed your constitutional powers? We've been taught that only Congress can declare war. When the U.S. agreed to the UN charter we didn't agree that it would supplant our constitution. Therefore, even a legal act of the UN doesn't take away Congress' exclusive right to declare war, does it?

Can you claim you're acting under UN authority when the charter declares that the Big 5 on the security council must vote unanimously to make an action binding? The Big 5 weren't together on this, were they—not with the USSR absent and Chiang's Formosan henchman presuming to speak for 40 million Chinese?

Is it not going to seem odd to many people that in this case we desperately drape the mantle of the UN around us—while we ignored the UN when it suited our purpose, in Greece, in N. Atlantic Pacts, in Marshall Plan maneuvers?

Tell us the truth, Mr. President!

How do your ceaseless edicts that the Soviet Union is an aggressor threatening Western civilization, and solely to blame for lack of peace, jibe with reports that you took the "gamble" of intervening in Korea because you figured Russia would not go to war? These aren't poker chips you're gambling with but my children's lives and bodies!

You- associates freely confess their great relief that Russia and China have'nt reacted to this provocation with military force—of which they have considerable. If Russian troops and planes intervened in a Mexican or Canadian civil war would your administration be as calm and sane as the Russians in the present situation?

Rememberest thou the insanity of Forrestal—when he

ran down the street yelling the Russians had landed? (They're no more in evidence this time, are they?) Will not people wonder—if it could happen to the Secretary of Defense it could be happening to other government officials, and ask if a similar madness does indeed possess them now, which could lead the nation to destruction as it lead Forrestal?

What answer have you to the Russian charge that the U.S. is guilty of "a direct act of aggression?" In view of the iron curtain on news from N. Korea isn't it as reasonable to accept the Soviet version as Washington's?

Should we learn later that there is some basis to this charge, Acheson's claim that what happened in Korea is "the most cynical, brutal, naked, unprovoked ag-ression that could ever occur" will certainly be true. But Secretary Johnson's boast that your actions represent "the finest hour in American history to date" will hardly be the verdict of honest men or history, will it?

Americans have a right to demand the truth of their president!

If it is true, as you assert, that "we are not at war . . . we're just driving out a bunch of bandits who've invaded Korea," why did you order our armed forces to intervene in Formosa and Viet-Nam? Didn't you promise we'd no longer help that bandit Chiang?

[fol. 271] Since Formosa is as integral a part of China as Staten Island is of the USA, isn't your order a declaration of war against the Chinese republic too? And isn't it intervention in Viet-Nam's civil war? (Will Americans be dying there next?) If we're capable of intervening in one civil war, might it not be assumed that is what we're doing in Korea?

What truth is there to reports that Chiang and the U. S. have a secret pact calling for the invasion of the Chinese mainland by American and Japanese troops? Could your Korean "gamble" be the prelude to a vast plan for thwarting liberation movements throughout Asia, and Africa?

Is it conceivable, Mr. President, that your Korean adventure is the American version of the Reichstag Fire?

When we recall how convenient that fire was for the Nazis, disturbing parallels strike the mind, do they not?

Already the fascist Mundt-Nixon bill is being pressed again, Congress appears likely to give you billions more in arms, and we're told that you have "ready for submission to Congress in case war results from the present Korean situation . . . a war powers act more extreme than any the U.S. has ever had . . . said to make the President a virtual dictator."

How convenient a "counter-attack" the Korean war is against the growing peace forces in this country and the world against Trygvie Lie's peace mission. How convenient a stroke it is for getting people's minds off grave unemployment, the jailing of political dissenters, the legal lynchings of our Negroes, the death of freedom of schools—the failures of your administration to meet our nation's needs.

In another war your reward to Americans for their victory over fascism's forces only five years ago? Will the cold war against the people of America become a hot one?

For your sake, for America's sake, for the sake of mankind—Truman, tell the truth!

[fol. 272] EDUCATION FOR ——? June 30, 1950

June 23, 1950 will go down as one of the blackest days in the history of American Education. This is the day the University of California regents fired 157 teachers and other personnel for refusing to bow before them and permit the regents to decapitate their birthright.

There have been attacks on our schools before—since the reactionaries have not really wanted the people's children educated. But never such a wholesale massacre. Teachers are being fired for teaching. Their salaries are a national disgrace.

School buildings and equipment throughout the nation have long been in miserable condition. Classrooms are grievously overcrowded. But a Congress and administration which appropriates almost 80% of our national budget for war purposes can not find one penny for education.

Obviously in a country being regimented it is dangerous to permit freedom of thinking and teaching. Chancellor Robert M. Hutchins of the University of Chicago asserts: "The miasma of thought control that is now spreading over

the country is the greatest menace to the U.S. since Hitler.'' And Harvard's Dr. Kirtley Mather comments that the attacks on our educational systems are ''ominously reminiscent of the techniques used by Hitler in the first years of his Nazi regime . . .''

Who are these regents who set themselves up as arbiters of who is fit to teach and what our children may learn and think?

A Gianinni—whose family and bank have long been identified with Mussolini and his program. A John F. Neylan—long the attorney for the un-American Hearst. An Earl Warren—front for all that is reactionary in our state and nation.

Can any intelligent individual believe that persons such as these, who control our schools, will permit the schools to prepare our children to become the informed and articulate defenders of democracy—which the safeguarding of our country and our lives demands?

Three years ago there was published an important study entitled ''Men Who Control Our Universities'' by H. P. Beck. In analyzing the background of the 734 trustees of the 30 leading American universities, he found that not one of them was a Negro, not one was a worker, only 3.4% were women, only 1% were farmers, only 36 of the total were educators—while the largest number were directors and executives of big business and high finance.

These are the rulers—the school boards who are trying to cover up the wretched conditions of our schools by intimidating the teachers. These are the kind of men who are making certain that—in the words of Prof. J. J. DeBoer of Illinois—''The drive against free teaching today is being coordinated with the drive to world war.''

This is evident too in the increasing militarization of our schools . . . in the transformation of generals and jingoists into college presidents, in the emphasis on ROTC, in the growing dependence of the universities on the military funds brought in by contracts for ''military science research.''

It is inevitable, of course, that if we permit this situation to continue, the best teachers, the most principled and courageous ones will be driven from our schools . . . com-

pelled to seek refuge in other lands, as was the case under Hitler.

It is inevitable too that if this madness persists the school authorities will demand that students sign "loyalty oaths." The lofty regents will take to deciding which of our children are "fit" to attend their pasteurized institutions. Or, they might compromise on special benches for the "untouchables."

The fact that the cold war has hit our classrooms—and the minds of our children—is a crime so far reaching that it is almost impossible to comprehend it. But what is more frightening is the equally obvious fact that there is almost no protest from anyone—from our civic and cultural leaders, or the parents!

[fol. 273] We Are Not Alone June 23, 1950

Every medium of communication today is a weapon directed against the people of America by the cold warriors. All the newspapers, magazines, books, movies, radio stations and public speakers (with rare exceptions) are so loaded with hysteria and fear, with lies and threats of war, that we are almost overwhelmed with a sense of doom. We begin to feel American reaction is so powerful that it is almost futile to struggle against it. Which is just what the bi-partisans want.

As an antidote to these poisons we should take stock of the people's strength and their will-to-live. It will do us good to take an inventory of the forces for peace throughout the world. We will then find that we in the USA are not alone in the battle for security and sanity, that the best people in the world are on our side. We will find that it is not the power of fa-cism which is invincible, but the power of the people—which Hitler found out.

1. To begin with, there are the people in the nations irrevocably committed to peace: the 185 millions in the Soviet Union, the 400 millions in China, the millions more in Viet-Nam and all of Southeast Asia.

2. Then there are the stirring millions in the great African continent, the millions in Italy who are fighting for land reform, and the people of the new state of Israel who will serve as a beacon for all the Near East.

3. Humanity is fighting back in many ways: The International Red Cross has called for a banning of atomic weapons. At Blaine, Washington, the youth of the USA and Canada recently set up a peace arch, and pledged their energies to wage peace. Thirty thousand peace committees are at work in Italy, and many more in France. In East Germany over half a million youth staged a mighty peace demonstration (which our provocateurs maligned). In Cuba last month a broad popular coalition was victorious in Havana and other municipal elections.

ACTION ON ALL FRONTS

4. In our own land the burgeoning peace forces are arousing the people, in all sections of our society from the right to the left, from the non-political Quakers (whose peace proposals have had a profound effect) to the Communists (whose fight for the basic rights of all Americans is a force for peace). Three weeks ago at the Mid-Century Peace Conference in Chicago 650 delegates from 33 states, Alaska and Hawaii, made this the broadest grass-roots union of peace forces in a decade.

5. The National Labor Peace Conferences have done effective work, and counteract those who are selling out organized labor. This is true too of the National Conference of Negro Trade Unionists, just concluded in Chicago. A Farmer-Labor Alliance, described as the broadest in history, has been formed in Idaho for the 1950 elections. The Methodist, Lutheran, Unitarian and other church bodies have taken courageous stands for negotiations with the Soviet Union. The wonderful Minute-Women For Peace are expressing the demands of our mothers.

6. The trade unions—such as the ILWU—who refuse to be intimidated lend great strength to our side. So does the Progressive Party, which has already slowed down the timetable of the war-mongers. The ceaseless struggles of the Negro people for liberation make them the single most powerful factor in America for peace. The function of such purposeful minority group organizations as the International Workers Order and the American-Mexican National Association makes them potent allies for democracy. This is true also of the new Union of Progressive Veterans.

7. The world's greatest minds are on our side: Albert

Einstein, Thomas Mann, Nobel Prize winner Niels Bohr, Harvard astronomer Howard Shapely, England's great professors Blackett and Bernal, France's genius Joliot Curie, George Bernard Shaw, Charles Chaplin, Henry Wallace, Dr. W. E. B. DuBois, Paul Robeson, Marion Anderson, Pablo Picasso, Pablo Casals, the Dean of Canterbury—and many more! Whom have the fascists got to match these?

8. The world's response to the peace crusade of Trygve Lie, the United Nation's executive, is surely indicative of mankind's determination to resist annihilation in any third world war. (And yet, when Lie urged Harry Truman to send our Secretary of State to a special meeting of the United Nations Security Council this summer, which he said was necessary to keep the UN from collapsing, our President—according to Drew Pearson—"said he could do no such thing; that it would be a cruel hoax to play on the American people when there is absolutely no chance of agreement with Russia.")

9. Perversely, the inhumanity, crudity and duplicity of the cold warriors is a factor for peace: many people everywhere are being revolted by them—and educated.

[fol. 274] GLOBAL PEACE CONGRESSES

10. The mighty peace congresses in Paris, Wroclaw, Moscow, Peking, Mexico, and New York City, are all dramatic proof that the people are on the move and will not meekly accept the dictat of the international cannibals. The most recent congresses in Australia, Canada and Pakistan show again that the people are mobilizing everywhere.

11. The World Congress of the Partisans of Peace just concluded in Stockholm is, in a sense, the most significant of all, a culmination. Delegates from 52 countries participated. Here was adopted the electric peace pledge which has set in motion the forces which can definitely turn the tide for peace:

> *We demand the unconditional prohibition of the atomic weapon as an instrument of aggression and mass extermination of people, and the establishment of strict international control over the fulfillment of this decision.*

We will regard as a war criminal that government which first uses the atomic weapon against any country.

12. The response to this pledge has aroused the world. The campaign for signatures, which is to be concluded by United Nations Day on October 24th, has already secured 12 million signers in MacArthur's Japan, seven million have signed in Hungary (in a total population of nine million), one million pledges in Brazil, a goal of a million set in Argeentina—and many millions more are signing in the USSR, Algeria, Bombay, Israel, everywhere! The Associated Press reports that "Western observers" are saying the petition "has dangerous potentialities, and at present there is no good counter propaganda to meet it." (None except the realization of peace!)

In the USA the Peace Information Center, under the chairmanship of the eminent Dr. Dubois, has set a goal for five million signatures—500,000 to come from California. Boston has launched a campaign for 100,000 and in Brooklyn 18,000 names were signed in one week-end. Already peace organizations are active in 50 of our cities. (The Progressive Party has urged its members to go all out in this campaign. Why don't the Democrats and Republicans do likewise—or has it become unAmerican to speak for Peace?)

Our inventory (incomplete as it is) shows then, that the forces of peace are strong, that the people are fighting back, with increasing success daily. But there is no room for complacency. Now more than ever we must intensify our efforts to make the peace potential pay off.

As the authoritative observer Johannes Steel asserts: "It is the American tragedy that the motive power behind current American foreign policy in Europe as well as Asia and in Latin America does not admit of any alternative to the cold war. The United States wants to win it, not end it."

Particularly in the face of the great strength of the peace forces on our side, we Americans dare not allow our government to persist in its refusal to make peace. Or our crime will be the greater if a third war comes, greater even

than the guilt of the German people who did not stop the Nazis. History will never forgive us.

From this recognition of the strength of the people we draw inspiration and ammunition. We must go on fighting in the spirit of the Americans at Valley Forge—in the spirit of Vito Marcantonio, who recently declared: "Midnight has ended for the common people of the world. There are dark days ahead, but we will triumph. There may be some dispute as to whom the first half of the twentieth century belonged, but the second half belongs to us!"

[fol. 275] Meaning of The Primary Election
by Raphael Konigsberg June 16, 1950

The highlights of the June 6th primary election were: (1) the large number of congressional and assembly races which were decided in the primaries; (2) Warren's winning over ½ million more votes than Roosevelt; (3) Douglas winning the U. S. Senate nomination; (4) Tenney's victory; and (5) Bernadette Doyle's remarkable race for State Sup't. of Education.

There are ten congressional districts in L. A. County: In five of them the incumbents won reelection. There will be contests in the other five. But, with one exception, it won't make much difference, for the people will not have any real choice. What, for example, is the difference between a Yorty and a Hardy, as in the 14th C.D.

Only in the 20th district, where the reactionary Hinshaw will be opposed by the fighting progressive William Esterman will the voters have a true choice. This may be the case in the 13th C.D. also if the IPP exercises its privilege of naming a candidate in the finals.

What cross-filing does to the people's electoral freedom is even more glaringly revealed in the assembly results. There are 32 assembly districts in L. A. County. In 21 of them the elections were decided in the primaries. There will be contests in only 11 districts.

In but five of these will citizens be able to vote for candidates who represent their interests: I. H. Spears, the IPP candidate in the 47th A. D.; George Cowell in the 59th A. D.;

and in the 56th, 60th and 67th A. D.'s—where the IPP can name candidates.

The pervision of the ballot, brought about by cross-filing, is pointedly illustrated in these results—as in the gubernatorial and senatorial races also. Cross-filing, in effect, disenfranchises many of California's voters.

Bi-partisan Bankruptcy

The June 6 results show not only why cross-filing must be eliminated, but, even more important, they expose the bi-partisan bankruptcy and corruption which convinced the people of the need for a third party, (really a second party.) Progressives have repeatedly charged that there is no longer any essential difference between the Republicans and Democrats—and certainly election results as well as pre-election maneuvers proved this to the hilt.

The contrast between the overwhelming Democratic registration in California and the consistent Republican victories is not so puzzling as it may seem. The voters simply fail to see any important differences between the two "major" parties, and those who want reactionary candidates apparently prefer them 'straight.' The Democratic Party—having destroyed every decent principle FDR tried to instill in it—is a deliberate accomplice in this deception, this crime, against the people.

The election results are further proof of the degeneracy of the Democrats, who quite openly preferred to hand the elections to the Republicans on a silver (or golden) platter rather than accept the support of progressive forces to help elect people's candidates. This is not California Democrats' policy alone: it is their national policy, derived from that little alderman in the big White House. Look what he did for Taft in Ohio.

The People Double-Crossed

The big-partisan double-cross of the people is shockingly revealed in the 14th C.D. Here they consciously sabotaged the aspirations of the Negro people for a congressman of their own. They injected Yorty in the race after the Unity Committee, representing that community, made it unmis-

takably clear that the time had come for the election of a Negro congressman.

Now the people are left with a choice between the unspeakable Yorty and a Hardy who is identified with the worst reactionaries in the country. Such tactics only further alienate the Negroes from the Republicans and Democrats. You just can't keep on betraying people.

The bi-partisan collaboration is exposed further in the dirty scheming which placed the political doodler Boddy in the senatorial race—with the obvious purpose of helping the Republican Nixon win. Boddy was the creature of the Luckey forces, whose spokesman (leader of the official Democrats) declared long before the elections that he preferred a Warren-Nixon ticket.

Does one need further proof of the fact that the Republicans and Democrats are even closer than Siamese twins? Then what about the failure of Luckey's Democrats to support James Roosevelt effectively? And, to top them all, what about the betrayal of all the decent people in the state, and the nation, by their forcing Anderson into the race for State Senator, bringing victory to Tenney?

The Issues Confused

The bi-partisan campaign against Robert W. Kenny—who in the best sense of the American tradition represented the interests of the people against those of their enemies—portrayed in one picture the major evils infecting our political life today.

A clear-cut fight between Kenny and Tenney would have given the voters an opportunity to make a clean choice between the arch representative of American fascism and the American democrat. But this the misleaders of the people could not afford. So they shoved the liberal Anderson into the race to confuse the issues. (For allowing himself to be used in this way Anderson has much to answer.) The Democrats knew they would split the Democratic vote and enable Tenney to win.

This campaign too revealed the evil of cross-filing—and that third major affliction, the disunity of organized labor. The CIO and AFL (bi-partisans also) are tied so closely to the cold-warriors that they would not even campaign against

Taft-Hartley congressmen. They went along with all the tricks that helped their enemies Warren and Nixon and Tenney. Even the progressive unionists did little for Kenny.

The Voters Alerted

A major share of the work for Kenny was done by the Independent Progressive Party—which thus again showed the integrity of its program and membership. Although its members could not vote for Kenny in the primaries, the IPP strove valiantly to arouse the citizenry to an awareness of the basic issues in the campaign.

This contrasts sharply with the studied efforts of the bipartisans to avoid the issues like a plague. A grave error in the Roosevelt and Douglas campaigns was their refusal or inability to courageously discuss the major needs of the people—jobs, peace, civil liberties, etc. Roosevelt and Douglas ducked the issues, went along with their opponents tactics to hide them, instead of forcing their foes to come out in the open on these issues.

What Roosevelt and Douglas might have achieved if they had forced such a fight is strikingly illuminated in the achievement of Bernadette Doyle—who refused to duck any issue, spoke militantly for the people's rights and hopes, and won over 414,000 votes in the state, an all-time record for an avowed Communist. (In L.A. County alone Doyle was given over 268,000 votes, 114,000 more than Kenny.) [fol. 276] It is amusing that in their desperate efforts to obscure the significance of Bernadette Doyle's great vote—and the remarkable showings of Henry Steinberg for County Assessor (58,654 votes) and Walter Martin for Sheriff (40,168 votes)—the presstitute press assumes that those voters were "ignorant." But when these same voters choose reactionary candidates then they are "sound Americans."

Lessons Learned

Analysis of the June 6 primary results points up the following important lessons:

1) The Democrats in California cannot hope to win victories without the support of the progressive forces. The progressives may not be strong enough to win on their own,

but they are strong enough to ensure the defeat of a Democratic candidate by refusing to support him.

2) Roosevelt and Douglas have a chance of winning in the finals only if they fight boldly, without compromise, for the needs of the people—and only if they encourage to the utmost the support of all progressives.

3) The rank and file of organized labor must repudiate the treacherous leadership of their officers and politicos who have sold them out to the enemies of all working people. Union men and women must again take their places in the ranks of those fighting for jobs and peace.

4) The progressive citizens of California—particularly those in the IPP—must carry on an even more intensive fight for the final elections than they did in the primaries. They must mobilize the people to:

(a) Keep the IPP on the ballot and further their party's program;

(b) Unite more Negroes, Mexican-Americans and trade unionists with them in the IPP;

(c) Create the political climate which will persuade the Roosevelts and Douglases to make fighting campaigns—which they will not do if left alone; and

(d) Bring an awareness of the vital issues of the day to all the people to help defeat the leading exponents of fascism, to safeguard American democracy.

[fol. 277] Vote for Your Life - June 5, 1950

Thinking for one's self is not a skill developed in most of us by our schools or encouraged by our society. The task, therefore, of helping ourselves and our neighbors think through the basic issues of world peace and war is quite difficult.

During the war, for example, perhaps the hardest of all assignments given the army political education staff was that of convincing our troops that what we had sacrificed and achieved on the bloody battlefields was not enough—that we had finished only half the job—and that when we returned home we would have to protect our investment in democracy by continuing the same fight as citizens.

What made this assignment especially arduous was the

undeniable fact that too many Americans have almost no conception of the citizen's role in a democratic state.

Most of us live through our allotted years grasping for all the privileges that are ours (or have been) through the accident of American citizenship. But we are not conditioned to any acceptance of the fact that a price must be paid for these privileges. At least, our daily behavior shows little awareness of such a responsibility.

Is it not true that there are few among us who display a real sense of identification with our government? The vast majority of us have been divorced from any feeling of oneness with our state or federal government. We take little of the responsibility for what the government does in our name.

When we think about it at all, we usually think of the government as something apart from and almost alien to ourselves. Many look upon it as "something" which at all costs must be kept from interfering with their personal affairs. To that frightening degree have the rulers of America alienated many Americans from their birthright. To that degree have we been made our own worst enemies.

The depths to which this political perversion has gone can be illustrated in many ways—but in few so shocking as this incident, which occurred in Germany just two days after V-E Day.

One of our army discussion sessions was considering the relationship between a good citizen and his good government (one which was concerned with the welfare of all citizens), when the discussion leader asked:

"When you have seen a need in your community, like a new playground—or a problem, like civic corruption—have you and your friends tried to do anything about it, have you tried to help your government meet the issue?"

Exclaimed one sergeant, "Do! Why should I have done anything for my government? What did my government ever do for me?"

When the discussion which followed attempted to demonstrate that we the people are the government, that in helping our government we were helping ourselves, that we

were doing exactly this as soldiers and would continue doing so as citizens by voting intelligently, this 35-year-old sergeant shouted:

"Vote, hell! I never voted. I don't believe in voting!"

At that the discussion leader exclaimed furiously, "That's treason to everything we and our allies have been fighting for! Millions of people have given their lives for that very right to vote, for a voice in controlling their destiny—and here you are, an American citizen, shamelessly throwing that great prize away!"

"Aw, my vote wouldn't count anyway," he countered.

"He's right, you know," said another soldier, "the individual's vote doesn't count for much when crooked political machines and big business control things as they do. So why should he vote?"

It is clear that those who are responsible for this civic cynicism, the unprincipled politicos and the financial interests whose tools they are, are the real subversive elements in our nation. For they are guilty of destroying the faith of many Americans in the democratic processes upon which our fate depends.

Reaction's success, however, has begun to boomerang. There is a clean, invigorating wind blowing across our land today, a resurgent faith in an aroused citizenry's power. There is a growing confidence in our strength, in the potency of the ballot.

This is evidenced not only in the work of the Progressive Party throughout the nation, but also in the organization of countless workers for peace, in the citizens fighting the Mundt-Nixon bills, in the decent people mobilizing behind Hollywood's ten brave artists.

There is hope in America, and in the world—for all these movements dramatize the growing recognition of the very great power we the people possess in our right to vote. We are learning that our votes can decide whether we and our children will have life, or death.

[fol. 278] THE ONLY WAY TO LIVE June 1, 19

Many is the time that we who are active in the progressive movement have this "charge" hurled at us: "You say you're fighting for the welfare of all people . . . yet you're so busy fighting for others you neglect your own family."

Some who offer this criticism imply that we are hypocrites, since surely, in accord with the philosophy of free enterprise, we should be fighting only for "our own, first and last, and to hell with the other guy." Others protest too much methinks, feeling guilty about their failure to join in the common struggle. Still others are sincere; they deserve an answer.

We active citizens, who devote much of our energies and time to fighting for FEPC, civil rights, economic security, world peace—we love our families as much as any parents, and more than most. That is why we are so active.

We too want to protect our families and insure their material well-being. But we have learned that as long as there is one child who doesn't have security, our own children cannot be safe. It simply is impossible for any one set of parents, by their own efforts, to guarantee their children's life and future—as long as there are parents anywhere whom prejudice and greed prevent from providing a decent standard of living for their families.

We are selfish. We believe that the best way to help our families is to help all families. We love life, our own and those we have created. Cherishing life as we do, we want all human beings to enjoy it to the fullest. Till they do, we can't. We want to safeguard all life.

That is why, for one thing, we joined the democratic armies to fight fascism's forces, which represent death. When we went off to war we weren't accused of neglecting our families. We think we are still in the same fight—that American fascism is as much a danger to our families and country as Nazism.

To be politically inactive now would not be a mark of devotion to our families, but a betrayal of them. Just as any citizen's failure to share in preserving the victory won in the last war is a betrayal of the nation and those who died for it. Poor citizens cannot be good parents.

It isn't that we progressives prefer to be busy with picket-

ing and precinct work. We would very much enjoy spending all our leisure with our families—and we want more leisure to do so. But how can you really enjoy yourself when you know that other families are being prevented from living normal lives? When Negro family life is being destroyed by oppression and lynching? When others are being destroyed by immigration hounds and witch hunters?

We progressives are fighting because we know if we don't stop reaction now there will be no families for us to love and enjoy. Think of how many families fascism and its crematoria consumed!

When there is vital work to be done, a mission in which everyone is needed and each person can make a contribution, how can you refuse to do your part? In a real sense, to do so is to deny the best in you. Such inaction always corrupts.

Certainly this means major sacrifices. We understand, for example, the detrimental ef-ects on our relations with our children deprived of the full attention of their parents. But, think of the Spanish republican parents, the French and Soviet and Chinese partisan parents, who were totally separated from their children for years—and whose fight was our fight.

Dare American parents suggest that they are not capable of equal efforts for their children's future? Dare we even imply that we deserve or want to buy it wholesale?

Of course many of us will not live to enjoy the rewards of our sacrifices. But that's not the main point. Others will, our children among them. We must think in long-range terms, in terms of our nation's destiny. We must have a sense of history.

Then too, there is the matter of one's conscience and convictions. If you believe, as all decent and just people do, that exploitation of man by man must cease, that the world and its riches belong to those who create them, then you must act accordingly. Failure to do so also corrupts.

[fol. 279] When we enlisted in the war against fascism, we did not stipulate that we were interested in crushing the German and Japanese brands only. We know that fascism has not been destroyed. We know that we are still at war, the same war, fighting now with ballots instead of bullets.

The surest chance of staying alive today is to fight. To be

silent, to be "neutral" is to court death. Because the time soon comes when fascists don't like or need neutrals. When they are ready they will force you to become an active collaborator, or kill you. Since you must fight, and perhaps die, better fight while you have the initiative and the chance to choose the side on which you fight. There is no other way to live today.

[fol. 280] The Evil of Self-Righteousness May 4, 195

Since human beings first associated themselves in various endeavors it has been realized that no human being or institution is perfect, that no person or organization can "always be right." And yet, it is not surprising, there have been persons and nations from the very first who not only were certain they were always infallible and superior, but insisted that others accept them at their face value.

Such persons, it is well known, frequently land in insane asylums—chanting incessantly that they, and only they, are the genuine "Napoleon!" Nations given to such delusions cannot be locked up (though Roosevelt proposed quarantining them) and so have brought indescribable degeneracy, agony and tragedy to mankind. Witness Nazi Germany.

As we read daily of the exploits of Truman and his bi-partisan associates, we are compelled to ask whether they—and the publishers of the papers which extol them—are not gravely afflicted with the disease of self-righteousness. Let us examine some of the symptoms:

(1) News from Washington these past years has repeatedly told of "Project X," the super central intelligence agency which our government has been building. It has been officially announced that one of its major purposes is to encourage counter-revolutionary activities wherever there exists a government our rulers don't like, as in eastern Europe. Simply put, this means that your taxes and mine are spent to buy spies in those countries, to bribe natives to turn traitors against their own governments, for the purpose of overthrowing those governments. And yet, when some of these spies are caught, as happened in Hungary, Washington raises its hands in hypocritical

horror, hysterically denying that the ultra-righteous State Department could be involved in such dirty work.

(2) Recently an American plane, fully equipped with radar and other essential navigational devices, was found over Soviet territory, 400 miles off its course. This could not be an accident. It was clearly a serious violation of international agreements. And yet—it is our government which has striven mightily to turn this incident into a "Soviet attack" against the U.S.A.! And our spokesmen in Congress have indulged in what is probably a new low in criminal irresponsibility, in effect calling for war!

(3) In the perverted language of the bi-partisans it is the Soviet Union which alone is responsible for the weakening of the United Nations. Always, they say, it is the USSR which undermines the UN—never the unilateral actions of the U.S.A.: our building of the bloc of North Atlantic Pact countries our joining in the civil war in Greece (on the side of fascism), our fantastic support of Chiang Kai-shek, our Marshall Plan designed to destroy democratic people's movements wherever they are growing.

(4) According to Wall Street and its mouthpieces in the State and War Departments (oops, I meant Defense Dept.), it is the Soviet Union which pushed us into the cold war and is keeping us there; it is "Red imperialism" which is forcing us to arm the world's fascists and ourselves to defend the embattled democracies of the earth. ("Soviet imperialism"—why even an elementary understanding of the structure and philosophy of the USSR, which we have a right to expect of our officials, would demonstrate that this is a basic controdiction in terms.)

They call the Soviet Union imperialist—when it is our government which has more bases and soldiers all over the globe than ever before, more oceans under its control, when it is our government which via "Point Four" plans to exploit the colonial areas of the world for the benefit of Wall Street, when it is our government which via the European Recovery (?) Program is attempting to dominate the economies of the countries which seek our help. Imperialism indeed!

Instead of being careful students of philosophy of the

Soviet Union—our wartime ally—it appears that our "leaders" learned more from Hitler—especially his use of the "Big Lie" technique. Say evil is good and falsehood is truth, say it often and loud enough, and the people will believe it! Along with this goes a colossal contempt for the people, for our intelligence and our hopes.

Here truly are falsehood and hypocrisy raised to the level of national policy! Here truly is the mark of the beast, mark of the fascist!

It is the mark of fascism—this disease of self-righteousness—for it leads inevitably to a soaring sense of superiority over all other people. (It is conceivable that the U.S.A. is always right and other nations always wrong?) If we are always right and others always wrong—then we are superior and they are inferior. Surely this is a philosophy and a national policy no minorities among us can approve, or be party to.

The bullying, self-righteous posturing of our spokesmen are by no means evidences of strength. No—basically they are signs of a profound sense of guilt, and a terrible fear born of the realization of great weakness and approaching doom. It is an incurable disease they have, these mad dogs—a symptom of the decay of their "American way of life," evidence that it has outlived its usefulness and that the people of our great land must make it over into a way of life which will insure truth and justice and security for us all.

[fol. 281] THE ANNIVERSARY - August 15, 19

Five years ago, August 15, 1945, the greatest, bloodiest war in history ended with the surrender of his country's forces by Hirohito—predecessor of the present emperor of Japan. The victory of the allied free peoples of the world demonstrated beyond all doubt their superiority over the fascists.

Every allied man and woman who participated in that war made history—as surely as did, for example, the freedom-loving people who achieved the French, American and Russian Revolutions. The allies gave mankind another chance to build the better world the best of men and women have dreamed of for ages. We proved once again that his-

tory is not made exclusively by the high-born, the rich and the generals (as the textbooks say)—that the people make history.

We paid a terrible price for victory: 22,000,000 men, women and children were killed during World War II—of whom 326,000 were slain American soldiers; 670,000 American soldiers were wounded. The value of the homes and buildings and land destroyed and the billions of tons of material expended can only be guessed at—but undoubtedly enough to give homes and schools and hospitals, and much more, to all the people who need them.

And it is important to recall why we and and our allies fought such a costly war. The U. S. War Department, in its political education program for our troops, stated officially that we were fighting to defeat fascism, which it described as:

"Fascism is the precise opposite of democracy . . . Fascism is government by the few and for the few . . . Fascism came to power in Germany, Italy and Japan . . . supported in secret by powerful financial and military interests . . . fascists solved unemployment by converting their nations into giant war machines . . . Those who subsidized and ran fascism grew richer . . . People of a fascist state earn less and less . . .

"Any fascist attempt to gain power in America . . . would work under the guise of 'super-patriotism' and 'super-Americanism' . . . Indiscriminate pinning of the label 'Red' on people and proposals which one opposes is . . . a favorite trick of native as well as foreign fascists . . ."

I know this was the official American definition of fascism and the enemy because for over three years as an army orientation officer I was ordered to indoctrinate our troops with that definition. I believed it to be true then. I believe it to be equally true now—and confirmed by what has been happening in my own country since the war ended.

The U. S. Army trained me well to recognize the symptoms of fascism. I am able to assert therefore that every part of that official definition describes accurately what native fascists are trying to do in America today.

WE FOUGHT WELL

Consequently, this poses a question of great significance—one which every thinking American must answer for himself: If the USA was right in paying so high a price to defeat fascism, can our government be right five years later in its actions which follow so closely its own definition of a fascist state?

If what we did five years ago to destroy the fascist states was right, what our government is doing now must be wrong. We can't possibly be right in both situations which are "precisely opposite" to each other. If what our government is doing today is right, then in helping to stop the fascists five years ago we paid an awful price to commit the greatest mistake in history.

[fol. 282] There are certain infamous Americans who insist that we were wrong to join the allied cause in World War II. But do the American people think so? To do so means to say that every American and allied soldier and civilian who died in the war died for a lie, that all the sacrifice the rest of us made on the battlefields and home fronts were for an evil cause.

Dare the Trumans-Dulles-Warrens tell our gold star mothers that their sons gave their lives for naught? That they dare not—for they know that that is the lie. They know the American people would reject such a betrayal, would drive such betrayers from public life.

We know we were right in fighting the fascists five years ago. We know that in beating them we gave democracy another chance. This is the great victory of that war . . . . which makes our sacrifice worthwhile. We learned that safe-guarding democracy, our children's future, is a lifetime job—and that we have the strength and wisdom to do it. We learned that we must fight fascism all the time, everywhere.

After our victory we had every right to expect the building of the better world we'd fought for. By our deeds, we the people earned that reward and proved ourselves worthy of it. We proved also that we are capable of creating it ourselves.

We have great pride in that victory—a pride that fortifies

us, that confirms our invincible power, a pride that is a source of profound satisfaction and a rich heritage for our children, a pride that will generate the determination to build a better life.

On this fifth anniversary of the world war's end, therefore, we pledge that we will take our victory back from the misleaders, from the traitors who sold us and our nation short.

[fol. 283] THE GANGSTERS, INCORPORATED October 5, 1950

As a citizen and taxpayer I want to suggest to our law enforcement authorities that they are spending too much of their time and our money on the small fry. They should be using the power and resources we have entrusted to them to apprehend and imprison those who are the greater menace to the peace of our communities.

This does not mean that the Dillingers and Capones should be allowed to operate freely. But it does mean that our authorities must develop a sense of proportion, of relative values. We must help them learn to spend more of their time doing those things which help the people most—such as putting out of action those criminals who are the greater threat to our safety, who are really disturbing the peace.

After all, is there any comparison between the sums stolen by the James and Dalton Boys, for example, and the billions which have been stolen from the American people by the Congressional gang which gave them to Chiang-Kai Shek? Or between the victims of all the murders in U. S. history and the numbers of our soldiers killed in foreign lands for the profit and power of the gangs who've controlled our government?

Measure all the blood and tears, all the broken homes and ruined lives, even the property losses, which have been caused by the crimes listed in our police records—and it is a cinch bet that they will not equal even a percentage of a fraction of the destruction of cities, lives and dreams caused by the criminals in public and corporation offices who have:

- ????? innocent people because of their skin color.
- Denied our wives and children even half of the glorified "American standard of living."

- Exploited working men and women and children at low wages,
- Turned troops on strikers,
- Prejudiced neighbor against neighbor because of color or creed,
- Refused adequate housing for American families, Stolen our civil rights and jailed us for protesting,
- Made war to save their profits and political power.

Was there ever a robber chieftain who urged the cold-blooded slaughter of millions of people—as do the American leaders who want to drop atom bombs over the world? Was there ever one so hypocritical as our cultured Secretary of State who said that any American favoring outlawing the atom bomb was a Communist? Was there ever one so amoral as our Secretary of Navy who recommended that the United States be willing "to pay any price, even the instituting of a war, to compel cooperation for peace."

No Comparison

Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as "killers." No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the "American way of life" we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.

None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attorney-General who denies us the right to bail and tells brother to spy on brother.

The preoccupation of our law enforcement officials (and the press, radio and movies) with the lesser crimes of the admitted gangsters—while they ignore and hide the greater crimes—is, of course, no accident. For one thing, by filling the newspaper and the air with stories of the petty criminals, they hope to keep our attention diverted from the plots and doings of the bigger criminals. For another,

public officials, civic leaders, and press and movie owners have been known to be in league with the organized criminals.

The Dillingers and Capones—while rarely Robin Hoods—at least have not claimed to be anything but what they were: men trying to make their pile under the rule of "I'll get mine and to hell with the other guy"—which rules our country. They got theirs, perhaps a little more crudely than various corporation executives and politicians—but never at such a cost to society. Never did they pose as the moral leaders and rightful rulers of our land. They weren't hypocrites.

[fol. 284] As we compare the deeds and motivations of the crooks and cutthroats with the crimes of the powerful men who have ruled our land, who consider themselves the respectable leaders of our society, are we not forced to ask—realizing that both groups are creatures of a degenerate society: Who are the greater menace to our community?

[fol. 285] COMMITTEE'S EXHIBIT No. 2

Testimony of Raphael Koenigsberg before the Senate Fact-Finding Committee on Un-American Activities, California, 112 State Building, Los Angeles, on Tuesday, September 7, 1948.

RAPHAEL KOENIGSBERG, called as a witness on behalf of the Committee, having been first duly sworn, testified as follows:

Chairman Tenney:

Q. Will you state your full name, Mr. Konigsberg?
A. Raphael Koenigsberg.
Q. Where do you reside?
A. 2446 Echo Park Avenue.
Q. What is your occupation?
A. Social worker.
Q. Are you presently employed?
A. Yes, I am.
Q. Where?

A. The Los Angeles Sanitarium.
Q. Is that a public agency?
A. No; it is a private agency.
Q. Where is it located?
A. In Duarte, near Monrovia.
Chairman Tenney: Proceed, Mr. Combs.
The Witness: Mr. Tenney,——
Chairman Tenney: You may give it to the press.
The Witness: No; I am not referring to any statement. I just wanted to ask, since you made a statement a moment ago, a very good statement it was, about the dangers of anti-Semitism, and since you have ejected our attorney, I suggest you eject or subpoena the anti-Semite who returned to the courtroom and now sits in the back of the room. At least you can be consistent.
[fol. 286] Chairman Tenney: We certainly did that. We ejected the man who caused the disturbance this morning. We have his name and address and he may be subpoenaed at a future hearing.
The Witness: He is in the room now. If you eject our counsel, we feel he should be ejected.
Chairman Tenney: We gave your counsel about five opportunities to conduct himself as an attorney and gentleman. He refused to do so. We finally had to eject him permanently. If the gentleman you have in mind does anything to disturb us, we will eject him, also. This is a public hearing for people whether they are good Americans or Communists or anti-Semites, whatever they may be; as long as they conduct themselves, they may be able to remain, but if they can't conduct themselves, they will be ejected.
The Committee has subpoenaed many anti-Semites, many subversive leaders who head such organizations, and we have no more use for them than we have for Communists.
The Witness: We agree with the purpose of any committee's fight on subversive activities. Why, for example, hasn't the Committee interested themselves in subversive activities such as the recent murder of some Negro boy by the Los Angeles Police Department?
Chairman Tenney: We are here to question you, Mr. Konigsberg. You are not here to question us.
Will you proceed, Mr. Combs?

The Witness: You get your authority from the People of the State, do you not?

Chairman Tenney: That is right, and they have mandated us to investigate Communism, Fascism and Nazism.

Proceed, Mr. Combs.

[fol. 287] Mr. Combs: Q: How long have you resided in the State of California?

A. Since 1936.

Q. Prior to that time you resided where?

A. In Washington, D. C. May I ask this, Mr. Combs? I think we would save a lot of time, and incidentally, expense to the state in prolongation of the hearing if you permitted me to read a brief statement, which I am sure will cover the various points you have to ask.

Chairman Tenney: Mr. Koenigsberg, we will accept the copy of your statement, which will be attached to the transcript, and we will now proceed to the matter at hand.

The Witness: May I have an opportunity of reading it here during the questioning?

Chairman Tenney: No. We have denied that to every other witness. We know the routine so well, Mr. Koenigsberg.

The Witness: You mean your routine.

Chairman Tenney: No, your routine. Your audience may be fooled by it. Most of our good Americans are acquainted with the routine and the dilemma in which many of you find yourselves. We will save time and the transcript, and as you say, money, for the people of the State of California.

The Witness: That is what I am interested in. You are not afraid of what is in the statement?

Chairman Tenney: I am not afraid of what is in the statement, particularly of Communists.

Mr. Combs: I am afraid we had better go ahead with [fol. 288] the questions or we will be here all night.

The Witness: I will be very happy to cooperate, Mr. Combs.

Mr. Combs: Thank you very much. I would like to get started with that cooperation.

The Witness: All right.

(Whereupon, the statement of the witness was filed with the Committee and marked Koenigsberg Exhibit No. 1, September 7, 1948)

Mr. Combs Q.: Were you connected with the American Peace Crusade in 1940, Mr. Koenigsberg?

A. I don't recall any such organization.

Q. You don't?

A. No, sir.

Q. You never heard of the American Peace Crusade?

A. I may have heard of it, but I don't recall. What is the point or purpose of such question?

Q. Were you living in the 44th Assembly District at that time in 1940?

A. What street would that be? I don't remember the Assembly District.

Q. 960 Everett Street?

A. Yes, I lived at that address at one time.

Q. And you lived there in 1940, did you not?

A. I don't recall the exact year, but shortly before going into the Army.

Q. You never heard of the American Peace Crusade?

A. I don't recall any such organization. Perhaps it had some other name. No, I don't at that time—American Peace or American Mobilization—No, I don't recall such name.

[fol. 289] Q. There was the American Peace Mobilization, but I am not referring to that.

A. I don't recall any such organization, Mr. Combs.

Q. Did you ever hear of the Hollywood Independent Citizens Committee of the Arts, Sciences and Professions?

A. Yes, I have heard of it. Anyone that reads the newspapers has heard of it.

Q. You never heard of the American Peace Crusade, and a lot of people who can read newspapers have heard of that.

A. The Hollywood Independent Citizens Committee of the Arts, Sciences and Professions is a very recent organization.

Q. The other one is a 1940 organization.

A. May I say at this point by what authority actually do you ask such questions as to my association or affiliation with any organization, which, if I understand anything, and

I used to teach English, by the way, the American Constitution denies you the right to question my organizational affiliations.

Q. We ask you the questions by authority of a Senate resolution by which this Committee functions.

A. And the Senate authorized this Committee to act in a manner to subvert the Constitution of the United States?

Q. Are you going to answer the question, Mr. Koenigsberg?

A. I am answering the question.

Q. Or are you going to get into a debate? I am not being interrogated here, but you are, and you are most uncooperative. No-, let's get back to the question again, and you can answer or not, as you please.

[fol. 290] Were you a member of the Board of Directors of the Independent Citizens Committee of the Arts, Sciences and Professions?

A. I challenge your right to ask the question, but since it is a matter of record, I never was a member of the Hollywood Independent Citizens Committee.

Q. Did you attend its conference on Thought Control on July 9, 10, 11, 12, 13, 1947?

A. Again protesting in the same manner, I did not attend it.

Q. All right. Did you ever participate in the activities of the California Legislative Conference?

A. What is the purpose of that question?

Q. I have my own purpose, and I don't have to disclose it to you, and I don't think I shall.

A. Thank you.

Q. Answer the Question.

A. Mr. Combs, if you are asking me a question, I think you have the obligation of telling the reason.

Q. The California Legislative Conference has been found to be a Communist-dominated organization.

A. By whose definition?

Q. By our definition.

A. Do you expect us to accept that definition?

Q. I don't care whether you do or not.

A. It is a matter of public record I participated in the Legislative Conference, and I gave a report there.

Q. Thank you very much. Did you ever hear of an organization called the Congress of American Women?

A. Certainly.

[fol. 291] Q. Did you have anything to do with them?

A. Not to my knowledge. It was a very fine organization. I was never asked to participate in it.

Q. Did you ever speak before it?

A. Not to my knowledge.

Q. Are you sure of that?

A. Well, I am sure—the Congress of American Women?

Q. Yes.

A. I don't recall ever speaking to that organization.

Q. Were you backed in your candidacy for member of the Los Angeles Board of Education by that organization, or do you know?

A. I don't know. I would assume that they might have supported the Citizens Committee for Better Education in its program, and as you know, I was a candidate sponsored by the Citizens Committee for Better Education.

Q. According to the People's World of March 12, 1947, column 1, page 7, they were very active in your behalf in that campaign.

A. Fine. That proves they were for democracy.

Q. They are also in Tom Clark's list as a Communist organization. Did you ever hear of the People's Educational Center?

A. Yes, sir.

Q. Were you ever a lecturer there?

A. I was very proud to be a lecturer there.

Q. When did you lecture there?

A. I don't recall the exact date.

Q. Was it in the fall of 1947?

[fol. 292] A. It may have been.

Q. How long ago?

A. It was sometime in the past year.

Q. What did you lecture about?

A. I lectured about my observations in Germany and what the Fascists did in Germany and what they are trying to do in the United States.

Q. Were you paid for your work?

A. Not at all.

Q. How did you happen to become a lecturer there?

A. I was invited to.

Q. By whom?

A. The director of the school.

Q. What was his name?

A. Sidney Davidson. It is a matter of public record.

Q. Did you know that Sidney Davidson has been found to have registered as a member of the Communist Party.

A. Whether I knew it or not is a matter that this Committee has no authority to inquire into, but it wouldn't have made any difference if I had known it.

Q. You are a member of the Advisory Committee of the Los Angeles Division of the California Labor School, are you not?

A. Yes, I am.

Q. To keep the record straight, I don't think it has been specifically stated, the headquarters for that school is at 112 West Ninth Street, Room 812, isn't it?

[fol. 293] A. That is a matter of public record; it is. Wait a minute; did you say West Eighth?

Q. West Ninth, Room 812.

A. West Ninth; that is right.

Q. When were you last there, Mr. Koenigsberg?

A. Within the past week.

Q. For what purpose?

A. A meeting of the Advisory Board of the School.

Q. Did you attend the meeting that preceded it?

A. I did, since it has been made a matter of public record, and I question your right to ask what meetings I have attended.

Q. You can question the right, but I am interested only in your answers to the questions.

How did you happen to become a member of the Advisory Committee?

A. I was invited to serve as a member of the Advisory Committee.

Q. By whom?

A. By Mr. Hedley, the Director of the School.

Mr. Combs: That is all.

Chairman Tenney Q. Have you ever been or are you now a member of the Communist Party?

A. Mr. Tenney, I think the nature of my answer should be clear. I deny that this Committee has a right to question any American citizen as to his political affiliations. The purpose of such question is to subvert the liberties of our American citizenry, and as soon as we realize that is the function of such committees to serve, I think it is the best thing we can do to serve democracy.

Q. I now direct you to answer the question: Are you now [fol. 294] or have you ever been a member of the Communist Party?

A. I am not refusing to answer the question. I am stating the answer that any intelligent American can give, seeing what has happened today follows the pattern that happened in Germany. My answer is the citizen's right as guaranteed under the Constitution is paramount to the right of the un-American Legislative Committee to question me about affiliation. If you will read your American History books, and you claim to be somewhat of an expert on the subject, you will find, for example, in Pennsylvania, Thaddeus Stevens in 1935 tried to do the same thing with the Masons, and he was denied by the Supreme Court the right to question anyone as to whether or not he was a member of the Masons.

Q. For the third time, I direct you to answer the question which you have refused to answer so far.

A. I do not refuse. Let the record indicate that.

Q. Will you answer the question?

A. I have answered the question to the best of my ability.

Q. You raise objections for refusing to answer the question. The question is very distinct.

A. My hearing is very good, Mr. Tenney.

Q. Are you now or have you ever been a member? I now point out to you that some 30 or more individuals in the State of California, in spite of the fact that they have raised all of these points, have been convicted for contempt of this Committee.

A. That is a great tragedy in our country that these happen.

Q. Will you answer the question?

[fol. 295] A. Your purpose in asking such question——

Q. I am talking about the purpose.

A. —is to stifle all freedom.

Q. Have you been or are you now a member of the Communist Party?

A. I say this Committee has no right to ask any citizen such question.

Q. I think the record shows conclusively that the witness has refused to answer the question.

A. That is false, sir. I have not refused to answer the question.

Chairman Tenney: I think the members of the Committee agree that the witness has refused to answer the question. I think the Committee is unanimous in its conclusion that you have refused to answer the question.

Thank you very much, Mr. Koenigsberg; you are excused.

The Witness: I will answer it the only way any intelligent citizen can, to defend the principles of American democracy.

Chairman Tenney: You are excused.

The Witness: May I pass to the press my statement?

Chairman Tenney: Yes.

The Witness: May I distribute it to the audience?

Chairman Tenney: No.

The Witness: Why can't I do that?

Chairman Tenney: You are excused, Mr. Koenigsberg. The Committee will take a five-minute recess.

[fol. 296] COMMITTEE'S EXHIBIT No. 3

Copy

September 19, 1948

Sen. Jack Tenney, Chairman
Tenney Committee
State Building
Los Angeles

Dear Sir,

I have just noticed two serious typographical errors in the statement I handed your Committee when I appeared before you on September 7th. To keep the record straight, please make the following corrections in your copy:

Page 1, Line 6: Insert the word "Seventh" before "U.S." (I was the orientation officer for the Seventh U.S. Army.)
Page 1, Line 10: The sixth word in this line—'war' should read 'way' (. . . cleared the way for civilization to advance.)

Thank you.

Very truly yours,

/s/ R. Konigsberg
Raphael Konigsberg

TENNEY COMMITTEE HEARINGS—9/7/48

2446 Echo Park Ave.
Los Angeles

[fol. 297] Statement of
RAPHAEL KONIGSBERG

For three and a half years I served in the American Army —in the U. S., Africa, Italy, France and Germany, as an Orientation Officer responsible for the political education of thousands of our soldiers. The objective of the Army orientation program was to give the American troops an understanding of the basic issues of the war and of the peace. In my last post, with the rank of Captain, I was the chief orientation officer for the Seventh U. S. Army in

Germany supervising the program for over 400,000 soldiers.

When I sa-led from Europe for home, I was certain that after what we and our Allies had done in winning the war the world would never be the same again, that we had cleared the way for civilization to advance.

I looked forward to my country's future and my own with unbounded faith in our ability to build that better society we all needed so desperately. I was proud of America and proud that I had earned my right to American citizenship and that I could pass this heritage on to my children as a guarantee of their future.

Then I came home . . . and the America I found made me fear for the future of my children. For I returned from a war against the forces of fascism to find the preconditions of fascism's triumph being engineered in my own country! I could not believe the evidence of my senses.

Therefore, I have been studying the deeds of the rulers of our country and their representatives—of which the Tenney Committee is an example—and with deepening horror I am forced to conclude that it is you who are the real enemies of our country and world peace. You, the financial-military bi-partisan cabal, are the subversive Americans.

[fol. 298] Here is the evidence:

You defend and arm fascists, America's enemies, all over the globe and persecute defenders of democracy in America. You entrust the defense of our democratic system to men like Forrestal who helped build Nazi power.

You proclaim that the Truman-Marshall plan "is directed not against any country or doctrine, but against hunger, poverty, desperation and chaos" . . . and then you tell the people of Europe and Asia to vote and live the way you want them to or starve and die. But, when the peoples there move toward a more democratic life you accuse other nations of intervention!

You know that before the fascists can take full power in any country they must first divide and smash the labor unions and that is what you are endeavoring to do in America. You display inordinate zeal in ordering Congress to give our tax funds to the murderers of the Greek and Chinese people, but show no comparable enthusiasm in fighting for the welfare of Americans. Do you expect us

to believe that a few Communists are responsible for the program you have decreed for us: Lower living standards, weaker trade unions, less economic security, less civil liberty, more guns, the draft and another war . . . while the dead of the last war are not yet decently buried?

You deliberately manufacture the Red scare—a tested Hitlerian technique—to conceal your own treasonable failures to meet our people's needs, to divert our attention from your ultimate purpose: to oppress and enslave Americans and dominate the world. By instituting loyalty inquisitions and wit-h-hunts you hope to frighten and destroy those who would expose your schemes and defend democracy—*which is why you have subpoenaed us today.*

[fol. 299] You sabotage the United Nations, you prostitute the honor of our nation—as in the double-cross of the Jewish State—and . . . arrogate unto yourselves the right to pass moral judgments on other nations! What contempt you feel for the intelligence of Americans.

You succor our wartime enemies, the killers of America's sons, the despoilers of civilization. And to our allies you offer starvation, fear, and death. If Hitler came to life today, could you refuse him aid? The millions cremated and slain cry out "Is it for this we suffered and died?" Will you tell America's dead they died for a lie?

What bankruptcy of morality, of social and political and cultural values! Dishonesty! Hypocrisy! Atomic force in place of reason! Personal gain above the common welfare! Hate your fellowmen! Destroy the ten commandments! Is this the American way of life we are to teach our sons and daughters?

As a father, I accuse you of plotting a society in which I am afraid to raise my children. You are stealing from me the leisure and peace of mind to enjoy and grow with my family. You are despoiling my children's democratic heritage . . . and threatening their lives.

As a Jew, I accuse you of planning an America in which my people can find no security. You are capable of doing to us what the Nazis did.

As a veteran, I accuse you of betraying all the promises our government made to Americans when we went to war. You have squandered the glorious opportunities our war

sacrifices gave our nation to build world peace and a better America. You have undermined our pride in our country. You are diabolically creating disillusionment, despair and spiritual decay, to prepare a soil in which fascist ideas can flourish—and democracy die.

As a citizen, I accuse you of shaming my country before the liberty-loving peoples of the earth. You have made [fol. 300] America, formerly honored as the saviour of democracy, the most feared and hated nation. What a spectacle you make of us: the most powerful nation on the globe claiming to be defenseless, terrified of decency and progress and every free idea. You have corrupted our magnificent war aims and turned them into their opposites. You are undermining our faith in the democratic form of government. You are conspiring to annihilate America if need be to achieve your goals.

In discharge, therefore, of my responsibility as a citizen, I do hereby declare war without quarter on you un-Americans, the enemies of my country, my people, and democracy. I pledge my word to use every democratic means to defeat you.

I know what I risk in doing so. I know too that if we do not stop you now, there will be a war—and I will be destroyed, for no good purpose. It is far better that a man expend his life in a manner most useful to the realization of his principles.

I want to fight while I still have the chance, and while there is yet time to choose the side on which I fight. Come what may, I want to know, and I want my family and friends to know, that I did my part to keep fascism from conquering America.

I cannot fight alone. To be effective I must join my strength to that of my fellow Americans. Together we defeated the foreign foes. Together we will defeat the conspirators within—and bring justice to America and peace to the world!

Committee's Exhibit No. 4

The Committee of Bar Examiners of the State Bar of California

2007 Central Tower, San Francisco 3 — 440 Rowan Building, Los Angeles 13

FILED [illegible] NO [illegible]
Atty: [illegible]
COMMITTEE OF BAR EXAMINERS
THE STATE BAR OF CALIFORNIA
EXHIBIT [illegible] #4

IN RE REGISTRATION OF

RAPHAEL KONIGSBERG
(Print Name)

REGISTRATION NO.

DATE FILED

FOR USE OF COMMITTEE OF BAR EXAMINERS ONLY

Registrant will be exempt from the first-year law students' examination

☐ (a) Has been admitted to practice in another common-law jurisdiction.

☐ (b) Exempt if he satisfactorily completes the first-year course in the accredited law school in which now enrolled.

☐ Registrant will *not* be exempt from the first-year law students' examination.

☑ Registrant had completed at least two years of college work before commencing to study law.

☐ Registrant had not completed at least two years of prelegal college work, but was over 25 years of age when he commenced the study of law.

Application approved..... Disapproved.....

I hereby apply for registration as a law student in accordance with the provisions of the Rules Regulating Admission to Practice Law in California, and submit the following information in support thereof.

The required fee of $5.00 accompanies this application.

Raphael Konigsberg
(Signature)

Address 2446 Echo Park Ave. - AN 1-[illegible]
(Street and Number) (Telephone)

Los Angeles 26, California
(City) (State)

Dated December 4, 19 50

INSTRUCTIONS TO THE APPLICANT

Read carefully the Rules Regulating Admission to Practice Law in California.

Fill out the following questionnaire in your own handwriting.

All statements are to be based on your own knowledge unless the statement is expressly qualified to show the source of your information.

Answer all questions and make your answers specific.

If the space for any answer is insufficient, complete your answer on a separate attached sheet.

This application for registration must be filed within three months after you begin the study of law, unless for good cause the Committee permits later registration. If more than three months have elapsed since you commenced the study of law, accompany this application with a letter requesting permission to file late and stating the reason you did not apply within the three-months' period.

Section 6060 of the Business and Professions Code and the Rules Regulating Admission to Practice Law in California (both of which you are referred to for more detailed information) provide that, in order to take the bar examination, a person shall

(a) Be a citizen of the United States.

(b) Be of the age of at least twenty-one years.

(c) Be of good moral character.

301

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of the bar examination.

(e) Before beginning the study of law, have completed at least two years (60 semester or 90 quarter units) of college work or have reached the age of 25 years. [Students who had not completed two years of college work nor reached the age of 25 years at the time of commencing the study of law may nevertheless be entitled to exemption from the prelegal college requirement if they do not claim credit for any law study pursued before, and prove that they have entirely complied with the legal educational requirement after, arriving at the age of 25 years.]

(f) Have registered with the examining committee as a law student within three months after beginning the study of law. The examining committee, upon good cause being shown, may permit a later registration.

(g) Have either:

(1) Graduated from an accredited law school requiring substantially the full time of its students for three years (or 24 months in certain instances. See Section 91 of the Rules).

(2) Graduated from an accredited law school requiring a part only of its students' time for four years (or 36 months in certain instances. See Section 91 of the Rules).

(3) Studied law diligently and in good faith for at least four years.

(h) Have filed application for and passed the first-year law students' examination or have filed satisfactory proof of exemption therefrom. To be entitled to exemption from the first-year law students' examination an applicant shall:

(1) Have satisfactorily completed the first-year course of instruction in a law school accredited by the committee at the time of his matriculation therein or so accredited at the time he completes the first-year course, or

(2) Have been admitted to practice law in a common-law jurisdiction.

The purpose of the following questionnaire is to help you and the Committee to determine whether you will be eligible to take the bar examination after you have completed your legal education. If you have any questions or doubts concerning your eligibility, communicate with the nearest office of the Committee of Bar Examiners.

REGISTRANT'S QUESTIONNAIRE AND AFFIDAVIT

1. Personal Data:

(a) What is your full name? RAPHAEL KONIGSBERG

(b) Have you ever been known by any other name? No
(Yes or No)

If so, state and give details. If change of name was by order of court, file certified copy of order with this application. If married woman, give maiden name.

(c) State the full names and addresses of all employers, business associates, and enterprises (including self-employment) you have had during the past six years, the dates of the employment and associations, and the positions held by you.

(Name)	(Address)	(Dates) From	To	(Position)
U.S. Army	Washington, D.C.	1942	- 1946	CAPTAIN - Orientation Officer
City of Hope	Duarte, Calif.	Mar. '46	- Dec 1949	Director of Social Service
California Eagle	Los Angeles, Cal.	Apr. '50	- Sept. '50	Associate Editor

2. Citizenship. [Notice: You need not be a citizen until you apply to take the final bar examination.]

(a) Are you a citizen of the United States? Yes
(Yes or No)

(b) If so, state whether you are a citizen by birth or whether you became a citizen by naturalization. By father's naturalization.

(c) If you became a citizen by naturalization, give date and place of naturalization, and submit original naturalization certificate, which will be returned to you,

(d) Where were you born? Austria

(e) If you are not a citizen of the United States, when do you expect to become a citizen?

3. **Age:**

(a) When were you born? March 25, 1911
(Month, Day, Year)

(b) State age in years and months. 39 years - 8 months.

4. **Moral Character and Fitness:**

(a) Have you ever been summoned, arrested, taken into custody, indicted, convicted **or** tried for, **or** charged with, **or** pleaded guilty to, the violation of any law or ordinance or the commission of any felony or misdemeanor (Include all such incidents no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court it nevertheless must be disclosed in your answer to this question)? No
(Yes or No)

If so, state the facts completely but concisely for each case, and give the date, name and nature of the offense, name and locality of court, and disposition of each such matter.

(b) As a member of any profession or organization, or as a holder of any office:

(1) Have you ever been suspended, disbarred or otherwise disqualified? No
(Yes or No)

(2) Have you ever been reprimanded, censured or otherwise disciplined? No
(Yes or No)

(3) Have any charges or complaints, formal or informal, ever been made or filed or proceedings instituted against you? Yes
(Yes or No)

If so, state as to each such case, the date, the nature of the charge, the facts, disposition of the matter, and the name and address of the authority in possession of the records thereof.

May 1950: The situation arising from my leaving my practice at the City of Vienna led to my filing charges of unprofessional conduct against another lawyer. Three of the friends I then felt similar charges against me. Those were dismissed by the Federal Board of the American Bar Association. You can check this with Chauncey Adams, Chm, Am Bar Assn Legal Workers, 60 S. Broadway, Los Angeles. No

(c) Have you ever been a party to or had or claimed an interest in any civil proceedings?
(Yes or No)

If so, give details.

303

(c) State every address (including your present address) you have had since you were sixteen years of age, commencing with the earliest.

(City and State)	(Street and Number)	From (Mth. & Yr.)	To (Mth. & Yr.)
Los Angeles, Cal.	- 2446 Echo Park Ave. -	Nov. 1946	Present
" "	- 1663 N. Coronado St. -	Jan. 1946	Nov. 1946
U.S. Army	- In U.S. overseas -	Oct. 1942	Jan. 1946
Los Angeles, Cal.	- 429 N. Bayleton Ave -	Apr. 1942	Oct. 1942
Monterey, Cal.	- 741 Oakdale Ave -	Jan. 1941	Apr. 1942
Los Angeles, Cal	- 969 Everett St. -	? 1940	Jan. 1941
" "	- 1711½ Norton Ave -	1938	1940
" "	- 1350 Hope St. -	July 1936	1938
Washington, D.C.	- had 3 addresses ??? -	Sept. 1935	June 1936
Cleveland, Ohio	- 9919 Ridgeport Ave. -	1927	1935

(During This time I attended Ohio State U. Columbus, Ohio)

6. **Prelegal Education.** [Requirement: Unless you were at least 25 years of age when you commenced the study of law you are required to show that you had completed at least two years (60 semester or 90 quarter units) of college work prior to commencing the study of law. Students who had not completed two years of college work nor reached the age of 25 years at the time of commencing the study of law may nevertheless be entitled to exemption from the prelegal college requirement if they do not claim credit for any law study pursued before, and prove that they have entirely complied with the legal educational requirement after, arriving at the age of 25 years.]

(a) Show how your *prelegal* education was obtained:

(1) Grammar School. (1) Preston, Conn. (Name and Location) From Sept., 1918, to Jan., 1923

(2) Lawton St. Hi Cleveland, Ohio (Name and Location) From Sept., 1923, to June, 1925

Graduated? Yes (Yes or No)

(2) High School. (1) Glenville High (Name and Location) Cleveland, Ohio From Sept, 1925, to June, 1928

(2) ..... (Name and Location) From ....., 19....., to ....., 19.....

Graduated? Yes (Yes or No)

GLENVILLE

(3) College or University, *other than law study*: Western Reserve University, Cleveland, Ohio 1928-1929; Ohio State University - 1929-1931; and 1934-35. (Name and Location of Each College Attended)

Dates of attendance. From ....., 19....., to ....., 19.....

Received Degree? Yes (Yes or No) What Degree? B.A. - 1931; M.A. - 1935

Was Degree received prior to commencement of law study? Yes (Yes or No)

(b) When did you commence the study of law? September 18, 1935. (Month, Day, Year)

(c) Before commencing the study of law, had you completed at least two years (60 semester or 90 quarter units) of college work? Yes (Yes or No)

(d) If not, were you 25 years of age or more when you commenced the study of law? — (Yes or No) [See requirement above.]

(e) How old were you when you commenced to study law? 39 yrs. (Years) 6 mos. (Months)

7. **Legal Education and First-Year Law Students' Examination.** [Requirement: Please see the Rules Regulating Admission to Practice Law in California. If you do not satisfactorily complete the first-year course of law in an accredited law school, or have not been admitted to practice law in another common-law jurisdiction, you must take the first-year law students' examination after the completion of your first year of study. Those who do not graduate from an accredited law school must study law diligently and in good faith for at least four years. You should ascertain whether your law school is accredited.]

(a) Have you attended or are you now attending a law school? Yes (Yes or No) If so, state school or schools, and give dates of attendance. School of Law, Southern University of California (Name and Where Located) - Since 9/18/35 (Dates of Attendance)

(b) Do you intend to show graduation from a law school as qualifying you to take the bar examination?

Yes
(Yes or No)

If so, from what law school? School of Law - Univ. of Southern California
(Name) (Location)

If not, describe and outline on a separate sheet your proposed study of the law from now until the time you expect to apply for the bar examination. State briefly how and where you expect to study, the subjects you expect to cover and the approximate time you plan to devote to these studies.

(c) Have you ever been admitted to practice law in any jurisdiction? No
(Yes or No)

If so, where and when?

References. List the names, addresses, and occupations of three or more responsible and reputable citizens with whom you have personal acquaintance.

	(Name)	(Address)	(Occupation)
(1)	Dr. Robert Kennedy	947 6/8th - L.A.	Doctor
(2)	Dr. H. P. Lee	1919 Hobbere Blvd L.A.	Doctor
(3)	William Burke	City of Hope, Duarte, Cal.	Hospital Supt
(4)	Grey McWilliams	541 S. Spring St. L.A.	Attorney
(5)	Lia McLennan	112 W. 9th St. L.A.	Attorney
(6)	W. D. Halpern	2027 Park Dr. - L.A.	Manufacturer

State of California)
) ss.
County of Los Angeles)

I, [illegible], being duly sworn, says: I have read the foregoing questions and have answered the same in my own handwriting fully and frankly. The answers are complete and true of my own knowledge.

(Signature of Applicant)

Subscribed and sworn to before me this 4th day of December 1950

(Notary Public)

My commission expires

Committee's Exhibit No. 5

The Committee of Bar Examiners
of
The State Bar of California

2007 Central Tower
San Francisco 3

440 Rowan Building
Los Angeles 13

IN RE APPLICATION OF

RAPHAEL KONIGSBERG
(Print name as you wish it to appear on your certificate of admission)

FOR EXAMINATION FOR ADMISSION TO PRACTICE LAW.

SPACE FOR USE OF COMMITTEE OF BAR EXAMINERS ONLY

Registration as a Law Student No. 28697

Application No. 1154

Exempt from First Year Law Students' Examination? ☐
or
Passed First Year Law Students' Examination? ☐
CHECK ONE

Date Filed 6-30-53

Regular Fee Paid $ 40 (Bar)

Late Filing Fee $.....

Fingerprinted ☑ Report in ☑

Law School Cert. in ☐

Number of times applicant has taken California Bar Examination.....

Application approved..... disapproved.....

STUDENT'S APPLICATION AND AFFIDAVIT

To the Committee of Bar Examiners:

I hereby apply to be examined as to my qualifications and eligibility for recommendation to the Supreme Court for admission to practice law in the State of California.

The required fee* of $ 40.00 accompanies this application.

I desire to present myself for the bar examination in the city of Los Angeles
(Insert either San Francisco or Los Angeles)

in October, 1953
(Insert either April or October)

Raphael Konigsberg
(Signature of Applicant)

Home Address: 2446 Echo Park Ave. - AN 34874
(Street and Number) (Telephone)

Los Angeles 26, California
(City) (State)

Office Address, if any: None
(Street and Number) (Telephone)

(City) (State)

Dated: July 29, 1953

*Please see Section 71 of the Rules Regulating Admission to Practice Law in California for amount of fee.

INSTRUCTIONS TO THE APPLICANT:

This application must be filed not less than three months nor more than six months prior to the commencement of the examination desired to be taken. *Applicant must fill out the questionnaire in ink in his own handwriting.* Each question and inquiry and each subdivision thereof must be answered fully, truthfully and accurately. *Any omissions or inaccuracies may be deemed ground for disapproval and rejectio.* If the space for any answer is insufficient, the applicant may complete his answer on a rider signed by him and specifying the number of the question to which it relates. All statements are to be based on applicant's own information unless the statement is expressly qualified to show the source of his information.

The requirements for admission to practice law are contained in the Rules Regulating Admission to Practice Law in California, copy of which may be obtained from either office of the Committee of Bar Examiners. Briefly stated, the Rules provide that, in order to take the bar examination, a person shall:

(a) Be a citizen of the United States.

(b) Be of the age of at least twenty-one years.

(c) Be of good moral character.

(d) Have completed at least two years of college work, or have reached the age of twenty-five years, before beginning the study of law. To have completed two years of college work within the meaning of this rule, the applicant shall have received passing grades in at least 60 semester, or 90 quarter, units of work in a college requiring classroom attendance of its students. (Students who shall have completed two years of college work not reached the age of twenty-five years at the time of commencing the study of law may nevertheless be entitled to exemption from the prelegal college requirement if they do not claim credit for any law study pursued before, and prove that they have entirely complied with the legal collegiate requirements after arriving at the age of twenty-five years.)

(e) Be and continuously have been a bona fide resident of the State of California for a period beginning at least three months prior to the date of the bar examination and continuing to and including the date of admission.

(f) Have registered with the committee as a law student within three months after beginning the study of law. (The committee, upon good cause being shown, may permit a later registration.)

(g) Have either:

(1) Graduated from an accredited law school requiring substantially the full time of its students for at least three years, or

(2) Graduated from an accredited law school requiring a part only of the time of its students for at least four years, or

(3) Studied law diligently and in good faith for at least four years.

(See section 94 of the Rules for more detailed information.)

(h) Have passed a first-year law students' examination given by the committee after the completion of his first year of law study unless entitled to exemption therefrom. To be entitled to exemption an applicant shall:

(1) Have satisfactorily completed the first-year course of instruction in a law school accredited by the committee at the time of his matriculation therein or so accredited at the time he completes the first-year course, or

(2) Have been admitted to practice law in a common-law jurisdiction.

APPLICANT'S QUESTIONNAIRE AND AFFIDAVIT

NAME 1. (a) State full name RAPHAEL KONIGSBERG

(b) Have you ever been known by any other name? (Yes or no) Yes If so, state and give details. If change was made by court order, attach hereto a certified copy of such order. If married woman, give maiden name (See attached sheet)

(c) State whether you are married or single, and if married, the name (maiden name if applicable) of your spouse Married
Wife's maiden name - Sylvia Leibenfeld

(d) State name of
Father Julius Konigsberg
Mother (maiden name) Anna Singer

AGE 2. Date of birth March 25, 1911 Age 42 (Years) 3 (Months)

CITIZENSHIP (a) State place of birthplace Austria

(b) Are you a citizen of the United States? (Yes or no) Yes

(c) If born in a foreign country, state age at which you came to the United States 8 yrs

(d) If claiming citizenship other than by birth in the United States, state the basis of such claim and exhibit proof. If naturalized, state the date when and the place where, and produce certificate. (See attached sheet)

RESIDENCE 3. (a) Are you a bona fide resident of California? (Yes or no) Yes

(b) If so, from what date have you continuously been such a resident? June 1936

(c) State the facts upon which you base your claim to have become and to be such a resident Moved to Los Angeles in June 1936 to take position with Council of Social Agencies

(d) Are you presently actually living in California? (Yes or no) Yes

(e) If not, explain the circumstances of your absence

(f) Do you intend to remain a bona fide resident of California until after you have been admitted to practice (see subdivision (e) of foregoing requirements)? (Yes or no) Yes

4. State every address (including your present address) you have had since you were sixteen years of age, commencing with the earliest. If space is required, continue on an attached sheet.

City and State	Street and Number	From (Mth. & Yr.)	To (Mth. & Yr.)
Oakland, Ohio	9919 Pierpont Ave	March 1927	Sept 1929
Columbus, Ohio	(Various boarding houses)	Sept. 1929	June 1931
Cleveland, Ohio	9919 Pierpont Ave	June 1931	August 1934
Columbus, Ohio	(Boarding house)	August 1934	August 1935

(See attached sheet for remaining addresses.)

PRELEGAL EDUCATION

6. My education *other than the study of law* was received as follows:

(a) Grammar School. (1) Craig School - Preston, Conn. From Sept., 19 19, to June, 19 24
(Name and location)

(2) Lincoln Jr. Hi, Cleveland, Ohio From Sept., 19 24, to June, 19 25
(Name and location)

Graduated? Yes
(Yes or no)

(b) High School. (1) Glenville Hi - Cleveland, Ohio From Sept., 19 25, to June, 19 28
(Name and location)

(2) ——— From....., 19....., to....., 19.....
(Name and location)

Graduated? Yes
(Yes or no)

(c) College or University, *other than law study:*

(1) Western Reserve U - Cleveland, Ohio From Sept., 19 28, to June, 19 29
(Name and location)

(2) Ohio State U - Columbus, Ohio From Sept., 19 29, to June, 19 31
(Name and location)

Received Degree? Yes If so, what Degree? B.A.; and M.A. in 1935
(Yes or no)

Remarks: Honors, etc.: 1941-2 — Completed two seminars of work towards Ph.D. degree; interrupted by World War II, at Claremont College, Claremont, Calif.

(d) Did you complete at least 60 semester, or 90 quarter, units of college work *prior* to commencing the study of law? Yes If so, how many units did you so complete? Semester units: ———
(Yes or no)
Quarter units: Enough to graduate. If not, were you at least 25 years of age when commencing the study of law? ——— How old? ——— [See requirement (d) at the top of this questionnaire.]
(Yes or no) (Years) (Months)

REGISTRATION

7. Have you registered as a law student with the Committee of Bar Examiners? Yes
(Yes or no)
[Applicant must register as a law student before filing this application.]

FIRST-YEAR LAW STUDENTS' EXAMINATION

8. (a) Are you entitled to exemption from the first-year law students' examination? Yes
(Yes or no)
If so, check basis of exemption:

☑ I satisfactorily completed the first-year course of instruction in a law school accredited by the committee at the time I matriculated therein or accredited at the time I completed the first-year course; or

☐ I have been admitted to practice law in another common-law jurisdiction, to wit:

———
(Name of jurisdiction)

(b) If not entitled to exemption, have you taken and passed the first-year law students' examination? ———
(Yes or no)
If the answer is yes, give the date of the first-year law students' examination in which you were successful: June, 19.....

LEGAL EDUCATION

9. My *legal* education was received as follows:

(a) Day Law School. (1) U.S.C. Calif - Los Angeles From Sept., 19 50 to June, 19 53
(Name and location)

(2) ——— From....., 19..... to....., 19.....
(Name and location)

Average number hours instruction and study per month: 240 hours.

Graduated? Yes If so, give date June 1953
(Yes or no) (Month, year)

Degree received, if any LL.B.

U.S.C. will send it. → [As proof of such study, file a Law School Certificate using the Committee's form.]

(b) Night Law School (or Day and Night Law School):

(1) None From....., 19....., to....., 19.....
(Name and location)

(2) ——— From....., 19....., to....., 19.....
(Name and location)

Average number hours instruction and study per month: ——— hours.

Graduated? ——— If so, give date ———
(Yes or no) (Month, year)

Degree received, if any ———

[As proof of such study, file a Law School Certificate using the Committee's form.]

(c) Correspondence Law School None
(Name, location)

Inclusive dates courses were taken: —, 19..., to..., 19...

Average number of hours study per month: —hours.

Graduated? —If so, give date —
(Yes or no) (Month, year)

[As proof of such study, file a Law School Certificate using the Committee's form.]

(d) Law Office Study None
(Name and address of attorney)

Inclusive dates of such study: —, 19..., to —, 19...

Average number of hours per month of instruction, study and research: —hours.

[As proof of such study, file an Affidavit of Law Study and an Attorney's Certificate of Law Office Study using the Committee's forms.]

(e) Private Study None
(Place where study occurred)

Inclusive dates of such study: —, 19..., to —, 19...

Average number of hours per month of instruction and study: —hours.

[As proof of such study, file an Affidavit of Law Study using the Committee's form.]

(f) Do the above statements of law study and instruction include *all* such study and instruction? Yes
(Yes or no)

If not, explain additional study on an attached sheet.

10. During the period of time devoted to law study I also devoted to occupations, employment, or activities other than the study of law during each year indicated the following average number of hours per week:

Year	Average Hours Per Week	Nature of Activity
1950-51	15	Recreation and home maintenance
1951-52	15	" "
1952-53	15	" "

PREVIOUS EXAMINATIONS

11. (a) How many times have you taken the California (students') bar examination? None

(b) State the month and year of each examination —

(c) Did you ever apply to take the California bar examination other than for the examinations listed above? No If so, state disposition of each such application —
(Yes or no)

(d) Did you ever apply to take the California (out-of-state) attorneys' examination? No
(Yes or no)

If so, state disposition of such application —

12. Have you ever applied for admission to practice law in any other state, jurisdiction, or country? No
(Yes or no)

If so, give name of state, jurisdiction, or country, and state specifically the disposition made of each application. If granted, state whether you were admitted, giving the name of the court by which admitted, and the date and place of such admission.

—

13. If you have been admitted to practice law in any other jurisdiction, make a complete statement of your practice since first being admitted. Include temporary or part-time work. State as to each employment or period of private practice:

(1) The periods during which you were employed as an attorney, or engaged in private practice, with the inclusive dates.

(2) The exact addresses of the offices, including room numbers, or places at which you were so employed or engaged and the names and present addresses of all employers, partners, associates, or persons sharing office space, if any.

(3) The reason for the termination of each employment or period of private practice.

(PLEASE PRINT ALL NAMES AND ADDRESSES)

(1)	(2)	(3)

14. Have you ever applied for or held a license, *other than as an attorney at law*, the procurement of which required proof of good character (i.e., certified public accountant, patent attorney, real estate broker, etc.) ? No. (Yes or no)
As to each such application, state the date it was made, the name and address of the authority to whom made, and the disposition thereof.

15. (a) As a member of any profession or organization, or as a holder of any office, or as an attorney:

(1) Have you ever been suspended, disbarred or otherwise disqualified? No. (Yes or no)

(2) Have you ever been reprimanded, censured or otherwise disciplined? No. (Yes or no)

(3) Have any charges or complaints, formal or informal, ever been made or filed, or proceedings instituted against you? No. (Yes or no)

If an affirmative answer is given to any of the foregoing questions, state as to each such case, the date, the nature of the charge, the facts, disposition of the matter, and the name and address of the authority in possession of the records thereof.

(b) Have you ever held a bonded position? No. (Yes or no) If so, specify on an attached sheet the nature of position, dates, amount of bond and whether or not anyone ever sought to recover upon your bond or to cancel the same.

(c) Have you ever served in the armed forces of the United States? Yes (Yes or no)

(d) If so and you have been separated from such service, state nature of such separation, and if other than honorable, specify type thereof, and circumstances surrounding your release.

Honorably discharged in rank of Captain – 4/17/46

(e) As a member of the armed forces have any charges or complaints, formal or informal, ever been made or filed, or proceedings been instituted against you, or have you ever been a defendant in any courts martial? No. (Yes or no)

If so, state on an attached sheet the date, the nature of the charge, the facts, the disposition of the matter, and the name and address of the authority in possession of the records thereof.

MORAL CHARACTER

16. Have you ever been summoned, arrested, taken into custody, indicted, convicted or tried for, or charged with, or pleaded guilty to, the violation of any law or ordinance or the commission of any felony or misdemeanor, or have you been requested to appear before any prosecuting attorney or investigative agency in any matter. (Include all such incidents no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court it nevertheless must be disclosed in your answer to this question) ? Yes (Yes or no)

If so, state the facts completely but concisely for each case, and give the date, name and nature of the offense, name and locality of court, and disposition of each such matter. If more space is required, continue on an attached sheet.

< See attached sheet. >

17. (a) Have you ever been a party to or had or claimed an interest in any civil (including divorce) proceedings? Yes (Yes or no) In April 1946, sued in Small Claims Court in Los Angeles for $150 for broken dishes, and won.

(b) Have you ever been declared a ward of any court or an incompetent or committed to any institution? No. (Yes or no)

(c) Have you ever been charged with fraud, either formally or informally? No. (Yes or no)

If so, give full details on an attached sheet for (a), (b) or (c), including dates, the court, if any, reference to the court records, if any, the facts, the disposition of each such matter, and if no court records are available, give to the best of your ability, the names and addresses of all persons involved, including counsel. If a divorce proceeding, state grounds:

271

18. (a) Are there any unsatisfied judgments against you (including those barred by the statute of limitations)? No
(Yes or no)

If so, list them on a separate sheet, giving names and addresses of creditors, amounts, dates and nature of debts, and reasons for nonpayment.

(b) Do you owe any other indebtednesses that are *past* due (including those barred by the statute of limitations)? No
(Yes or no)

If so, list them on a separate sheet, giving names and addresses of creditors, amounts, dates and nature, and reasons for nonpayment.

19. Were you ever dropped, suspended, expelled or disciplined by any school or college? No
(Yes or no)

If so, state reasons and give details fully on an attached sheet.

20. Have you ever been employed in any occupation, business, or profession *other* than the law? Yes
(Yes or no)

If so, give name and address of each employer, the business, the position you occupied and the *month and year* of the beginning and ending of each employment, and the reason why you left each employer.

(PLEASE PRINT ALL NAMES AND ADDRESSES)

Month and Year	Name of Employer	Address of Employer	Nature of Business	Position	Reason for Leaving
9/31 - 8/32	Baker Printing Co.	Cleveland, Ohio	Printing	Clerk	To teach.
9/32 - 6/33	Board of Education	"	Education	Teacher	To enter social work.
9/33 - 8/34	Cuyahoga C. Relief Adm.	"	Public Relief	Investigator	To return to school.
9/34 - 8/35	Federal Emergency Bureau	Columbus, Ohio	"	"	To take teaching job.
8/35 - 6/36	Dept of Health D.C.	Washington, D.C.	Public Health	Supervisor	"
9/36 - 8/37	Council of Social Agencies	Los Angeles, Cal.	Social Welfare	Statistician	"
9/37 - 10/38	Federation of Jewish Welfare Organizations	"	"	Survey Director	Program terminated.

21. Have you ever been dismissed, discharged or requested to resign by any employer? Yes
(Yes or no)

If so, state on an attached sheet the name and address of each such employer, and the date, cause and circumstances thereof. <See attached sheet.>

22. Is there any incident of a derogatory nature in your life not called for by the foregoing questions that may have some bearing on your character and fitness to practice law? No
(Yes or no)

If so, state facts fully but concisely on an attached sheet.

23. State the names and addresses of three or more members of the Bar or judges in each community in which you have resided since you were 16 years of age, with whom you have close personal acquaintance. If you are not known to at least three members of the Bar or judges in each such community, then, as your remaining references, state names, addresses and occupations of reputable and responsible business or professional men or women who are closely acquainted with you. [*Persons related to the applicant by marriage or blood are not acceptable as references. Do not give as references teachers or classmates who merely knew you at school.*]

(PLEASE PRINT ALL NAMES AND ADDRESSES)

	Name	Address (Street)	Address (City, State)	Occupation	Length of Time Known
(1)	[illegible]	Cleveland, Ohio.			
(2)	None in Columbus, Ohio.				
(3)	None in Washington, D.C.				
(4)	Edward Mosk	6305 Yucca St.	L.A., Cal.	attorney	15 yrs
(5)	Herbert Simmons, Jr.	315 W. Vernon Ave.	L.A., Cal.	"	8 yrs.
(6)	Mortimer Hoyal	1250 Wilshire Blvd.	L.A. - Cal.	"	5 yrs
(7)	Rabbi Jehuda Cohen	900 Hollywood Ave.	W.L.A., Cal.	Minister	17 yrs.
(8)	Morris Halprin	2027 Rex Dr.	L.A., Cal.	Businessman	13 yrs.
(9)	Chauncey Alexander	3067 W. 7th St.	L.A., Cal.	Social worker	15 yrs.

State of California
} ss.
County of Los Angeles

Raphael Konigsberg being duly sworn, says: I have read the foregoing questions and have answered the same in my own handwriting fully and frankly. The answers are complete and true of my own knowledge.

Raphael Konigsberg
(Signature of Applicant)

312

Subscribed and sworn to before me this

29th day of June, A.D. 1953.

Notary Public — My Commission Expires January 3rd 1957

1M—1-53

312

Continued on attached sheet

David 1913. Cundall attorney, Cleveland, Ohio — (1924-27)
Daniel B. Kennedy, Grad work Columbus, (1927-28)
Notre Dame de Grace, Que. - Montreal, Canada

272

Applicant's Exhibit "A"

TM 28-210

WAR DEPARTMENT TECHNICAL MANUAL

THE INFORMATION-EDUCATION OFFICER

WAR DEPARTMENT • JULY 1945

313

In November 1943, the Information and Education Division was established in the War Department as a functional staff division, under the Commanding General, Army Service Forces, for administration and supply. It was charged with the supervision and policy control of those activities which are concerned with the mental training and attitudes of the soldier, as distinguished from activities which contribute primarily to mental and physical rest and change for troops, which continued to be a responsibility of the Special Services Division. The mission of the Director, Information and Education Division, was defined as follows:

> "... the planning, production, dissemination, and supervision of materials and programs for the information, orientation, and nonmilitary education of troops and with research on troop attitudes, in order to assist commanders in maintaining a high state of morale."

Information-education staffs were set up in all higher commands; information-education personnel were authorized in all units and installations down to and including the regimental and post level; provision was made for the appointment of additional duty personnel in lower echelons; and the stipulation was restated that all military personnel "will be given training in orientation," and that in "regiments, groups and separate battalions, squadrons, companies and detachments, or equivalent organizations, not less than one undivided hour per week will be devoted to this training during duty hours." Throughout the Army, in short, orientation became a continuing training program, the information and education program became an established responsibility of commanders, and information-education personnel, primary and additional duty, became members of the staff or command team in every headquarters and organization.

This publication outlines the principles, purpose, and scope of the information and education program, and describes the duties and responsibilities of information-education personnel. For clarity, it is addressed in large part to the information-education officer at the regimental level, since at that level the information-education officer and his assistants are closest to the troops for whom the program is designed. The reader should have little difficulty in adapting the procedures and suggestions contained in this publication to his own problems. A careful reading of War Department Circular No. 360, 1944, as amended, is essential to a clear understanding of the material contained in this publication.

CHAPTER 1

PURPOSE AND SCOPE OF INFORMATION AND EDUCATION IN THE ARMY

Section I. MENTAL TRAINING OF SOLDIER

1. Importance of Mental Training

All armies now recognize the need for training the soldier's mind, in order to maintain his zeal for work and combat. The United States holds the belief that the soldier's mind should be free, informed, judicious, able to protect itself from sophistry and falsehood, alert and understanding of the larger problems of command, and of his Nation.

Such qualities of mind can grow only in the presence of a free press and freedom of speech, and they can only serve the individual and his democratic society adequately if he has the opportunity to nourish such qualities through information and education.

Free access to information, uninhibited discussion with his fellows, and a common opportunity to pursue self-education are three major resources which support the American concept of the mental training of the soldier in a democratic country.

But troops in vast numbers, on duty all over the world and segregated from familiar sources of news, of understanding of events, and of education, could hardly fulfill the natural rights of members of a democracy to know the truth and to grow through it, unless the Army they belong to would undertake to supply the needs of their minds as well as their material wants. This the Army does through its Information and Education program.

The nature of the Information and Education program in the American Army springs from the essential qualities of the men who make up the Army and the institutions from which they derive. These institutions, and the national traditions which form the American soldier even before he enters the Army, provide him with free access to many sources of information, opportunities for free discussion and opportunities for an unbiased education. These things produce a quality of initiative, self-reliance, and self-discipline which is held to be peculiarly American. When these qualities are combined with adequate military training and equipment they enable the American soldier to defeat the enemy, in many

cases without numerical superiority. Thus, the Army is in this sense the benficiary of the free institutions of America which have provided such qualities for its citizen soldiers.

The Army tries to retain these qualities in its troops, as a careful reading of the Staff Officers Field Manual, FM 101–5, or Military Courtesy and Discipline, FM 21–50, will indicate. But the forces which make for initiative in the Army tend to be offset by many other unfavorable factors. The soldier's food, transportation and equipment are furnished without apparent relation to his own efforts. His officers are forced by the structure and needs of military organization to demand prompt obedience to orders and subordination of the individual, and all too often there is neither time nor interest to make explanation. Indeed to many harassed officers, the easiest and wisest course may seem to consist merely in demanding conformity of the soldier without regard to his basic and valuable American characteristics. But the larger view indicates that such a course would be dangerous indeed.

If army life should be of a nature to change some of the most valuable traits with which the young civilian enters the Army, the Army would not only lose the unique qualities of initiative and self-reliance in its soldiers, but would before long lose the confidence of the American people. The Army cannot be at odds with the Nation on such a basic issue as that of the national character. Indeed, modern wars are not fought by armies alone, but by peoples sustained by belief in their own way of life. So long as American life is based on freedom and respect for the individual, it is necessary that the Army, so far as possible, base its handling of the soldier on the same principles. This is not an easy task; it cannot be accomplished by negative action. The Army must have a positive program, clearly understood and carried out through command channels, so that these American traits do not die from neglect or from lack of material on which to foster their spirit. This it seeks to provide through the information and education program.

It is not enough, however, that troops have access to information in general and an opportunity for free discussion of that information, together with educational opportunities fitted to their personal needs. They must also have access to particular types of information at particular times—either to resolve their doubts about the war and their individual roles in it, or to give them the confidence they need when facing difficult military operations.

The essence of the soldier in war is the ability to engage in battle and defeat his enemies. In the complexity of modern war this ability is often exemplified in duties performed far from

scenes of battle. But war remains simple to this extent: men do come to grips with each other, and the decision, for which all else is preparation, occurs on the battlefield. For this reason, it is the combat soldier who offers the most critical test (though not necessarily the most typical) of the validity of the view held by the United States toward its Armed Forces. If he is informed, and if, on the basis of the information he receives, he develops a positive attitude and an aggressive spirit, the information and education program has accomplished its purpose, namely, to contribute to success in battle.

The great majority of troops however, never engage in actual combat. A mental training program must recognize the needs of those men who are required to work hard and conscientiously in routine assignments, frequently in isolated situations. It must assist newly inducted troops in making the difficult adjustment from civilian to military life, and those for whom the problem is reversed. It must be adapted to the thousands of casual officers and men long absent from familiar civilian surroundings who are without comparable organizational ties in the Army. It must recognize those men whom war has injured physically and mentally. These and similar problems which affect the attitudes of troops are byproducts of military necessity. Wars must be fought in terms of masses; military policies must be determined in the light of over-all military necessity. The soldier should understand that. He should know that inconveniences and hardships do not happen to him as a result of arbitrary decisions by commanders, but that they represent part of his own contribution to victory. To give him this understanding is one of the responsibilities of the information-education officer.

In this buffeting, to which all are subject at one time or another, the information and education program is an alleviating factor. Each soldier has the opportunity to know and understand the common objective; why it is that he and his Nation must carry on until every obstacle to a lasting peace has been overcome; why that objective cannot be gained without the unquestioning sacrifice of his personal comfort, ambition, and, if need be, his life; why, if victory is to be won, the individual must temporarily be subordinated to the larger group. To each soldier, regardless of how insignificant his job may appear, history offers a page on which to record his contribution to the America of the future; to state with what degree of unselfishness and understanding he subjected himself to the vicissitudes of miltary necessity. Among the heroes of the war will be those soldiers who kept faith through the days of dreary routine, unsung but indispensable.

The mental attitudes of troops and their understanding of the

Having provided information in this way, it is a further responsibility of the Army and of the commander to insure that the soldier is permitted to hold varied opinions, without prejudice to his status, short of any that compel his disloyalty to the United States. That the Army is scrupulous in its performance of this responsibility is evident in the care with which the religious beliefs of the soldier are protected.

6. Integrity of Army Information

Control of the program of Army information and education is centralized in the War Department division responsible for its policy and operation. Every effort is made to insure the integrity of the ideas, expression, and materials of the program. The responsibility is a great one, and is to be shared by every officer throughout the chain of command, who is charged with any part of the duty of information and education. To be true to the historical ideals of the United States, the individual soldier's prerogatives of thought and expression, and the Army's traditional position of nonpartisanship—this is the challenge to those charged with the Army's purpose to bring the fullest possible intellectual resources to the Armed Forces, and to do it in the Army's idiom. If the soldier's experience is to be reached, respected, and reflected, the Army must remain faithful to its responsibility to provide free, full, and impartial information to troops otherwise largely cut off from the understanding of events in the world at war.

Section III. GIVING SOLDIER ACCESS TO FREE DISCUSSION

7. Understanding Through Discussion

The information and education program provides a means for soldiers to express and compare their views on matters of general interest through organized group discussion. Discussion periods are provided for both "on-duty" and "off-duty" time. Discussions scheduled for on-duty time are conducted, preferably, upon a platoon basis and are an integral part of the soldier's training. Attendance, therefore, is compulsory. Off-duty discussions are arranged to meet the desires or needs of troops for additional opportunities for discussion; attendance at these off-duty discussions is voluntary.

In both types of discussion periods, *participation* in the discussion is voluntary; each man may express his opinions, but is not required to do so. The soldier may exercise his inherent right of free discussion within the bounds of military security, mili-

tary courtesy and discipline, and commonly accepted standards of decency. This freedom, however, must not be permitted to become *license* for deliberate talk calculated to undermine the confidence of his fellow soldiers in the righteousness of the cause for which we fight, our Allies, our leaders, our faith in our country and its future. This restriction is similar to the self-imposed restriction necessary for successful discussion by any group in a democracy.

8. Responsibility of Discussion Leaders and Privileges of Participants

Subjects discussed by troops in either type of discussion period generally fall into three main fields of ideas. It is essential that the discussion leader distinguish one from the other, and handle specific discussion topics accordingly:

a. IDEAS WHICH ARE BASIC TO THE AMERICAN TRADITION. Such ideas include belief in the integrity of the individual, and a belief in the democratic process of government in the United States; also ideas which flow inevitably from those beliefs, are embodied in the Constitution itself, and are the practical basis for the American way of life. Examples are: that democracy is practical; the belief of Lincoln and Jefferson in the soundness of the majority of opinion of the common man when properly informed; racial and religious tolerance.

As to these, the information-education officer must have an outspoken and affirmative attitude, for these are the fundamentals on which all else we do is based. They are presupposed in the American tradition, and in the acts of democratic government which have given us our national character, by which we take our stand. These fundamentals should inform our whole approach to more specific ideas and subjects. As to these fundamentals, the discussion leader will energetically present to the soldier a concluded opinion.

b. POLICIES OF THE GOVERNMENT. These are expressed in laws enacted by the Congress, in executive orders, and in regulations and directives issued by the War Department. They represent, in the case of Congress, the majority decision of the American people; in the case of executive orders, the exercise of the President's responsibility as the duly constituted head of the Government; and in the case of the War Department, the unified command necessary to the fulfillment of the military mission.

In such matters, the discussion leader has a clear responsibility for explaining to the soldier the reasons for the majority opinion, and the reasons for acceptance by the soldier of the majority decision. The soldier may discuss matters pertaining to

curately; be sure that his programs and materials, and his methods of using them, are within War Department policy and within the objectives of the information and education program; have valid reasons for believing that his own materials are more suitable for a specific situation than those received from higher echelons.

The information-education officer should not overlook the staff resources which may be tapped in relating the weekly discussion to the interests and needs of troops. From S 1 he can obtain data on the awards and decorations within the unit, which add color to a discussion on that subject. S 2 will have information on the history and accomplishments of the unit. S–4 might be requested to prepare material on the place of logistics in winning the war. The special services officer (A&R) is peculiarly fitted to put on orientation shows inorder to drive home information which lends itself to dramatization. These are merely suggestions; the alert I&E officer will think of many ways in which his fellow staff officers can help his program, just as he helps theirs from time to time.

34. Qualifications of an Information-Education Officer

It is as difficult to describe the ideal information-education officer as it is to describe the typical soldier. The scope of his responsibilities best indicates the qualifications an information-education officer should possess. There are, however, two basic beliefs which all information-education officers *must* have, without which they can scarcely be considered qualified.

a. These basic beliefs are—

(1) Belief in the inviolability of the individual. This belief is basic to the American tradition. It is both a religious and an ethical concept, and in its practical application is the basis for the American way of life.

(2) A belief in the democratic processes of government in the United States; that democracy is practical; the belief of Jefferson and of Lincoln in the soundness of the majority opinion of the common man when properly informed. This again is a concept of American life.

He should not only hold these beliefs, but be able to implement them for the commander. He should strongly recommend that these principles be the primary basis of selection of company information-education officers.

b. As practical background, it is desirable that the unit information-education officer have successful experience as a commander of troops, or comparable experience which clearly indicates high qualities of leadership. Desirable civilian background includes experience in one of the following, or similar

Applicant's Exhibit "B"

*MR 1–10
1–5

MOBILIZATION REGULATIONS
No. 1–10

WAR DEPARTMENT,
WASHINGTON, March 5, 1943.

MORALE

	Paragraphs
SECTION I. Basic policies	1–8
II. Major factors affecting morale	9–22
III. Recreation and welfare	23–38
IV. Special provisions for morale	39–43

SECTION I

BASIC POLICIES

	Paragraph
Scope and purpose	1
Importance	2
Peacetime procedures	3
Special mobilization procedures	4
Major factors affecting morale	5
Organization for control and supervision over morale agencies	6
Planning	7
Construction	8

1. Scope and purpose. The directives herein are founded on those included in MR—General and MR 1–1 and are intended to set forth in detail those factors which have a decided influence on morale, to show how each of these factors should be dealt with in order to insure a high state of morale, and to indicate the most suitable and practicable organization for the control and supervision of morale factors.

2. Importance.—Morale underlies all aspects of military life. It is born of just and fair treatment, thorough training, and pride in self, organization, and country. The establishment and maintenance of good morale and the prompt elimination at their inception of all conditions tending to produce bad morale constitute a primary function of command.

3. Peacetime procedures.—Peacetime procedures as to morale form the basis for important special measures which must be initiated in a major emergency.

4. Special mobilization procedures.—These regulations include basic instructions applicable to any and all emergencies and set forth special procedures which may be utilized if and when directed by the War Department, according to the nature of the emergency and the method of transition from one to the other.

5. Major factors affecting morale.—*a. Administrative and related factors.*—Almost every activity pertaining to the administration, supply, and training of an army will be found to affect morale either directly or indirectly. Among these activities are—

(1) Development of the individual.
(2) Religious instruction, services, and ministrations.
(3) Promotion and decorations.
(4) Leaves of absence and furloughs.
(5) Discipline.

*This pamphlet supersedes MR 1–10, June 13, 1943.

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(c) Make provision for the care of women and children while visiting in the camp, including the maintenance of an up-to-date list of accommodations available in adjacent communities.

(d) Conduct a cafeteria for the benefit of visitors to camp.

e. Other services.—In addition to the hostess service as indicated in *d* above, other services, including technical, domestic, and janitor services, will be provided as required.

28. **Organizational clubs.**—Clubs other than service clubs will be as authorized by local commanders. Buildings, if available, and heat and light only will be provided by the War Department. Organizational clubs will furnish club features in which women are not included.

29. **Off-duty education.**—*a. General.*—The off-duty education program of the Army will be expanded upon mobilization to provide educational opportunities to all service men wherever stationed. This is to be accomplished by an extension of facilities for correspondence study, group instruction, and library service.

b. Objects.—The objects of the off-duty education program are to provide educational opportunities to meet the requirements of the command, to furnish assistance to personnel of the Army who lack educational prerequisites for assignment to duty which they are otherwise qualified to perform and to meet the requirement for promotion, to enable those whose education is interrupted by military service to maintain relations with educational institutions and thus increase the probability of the completion of their education upon their return to civil life, and to improve the value of Army personnel as citizens upon return to civil life.

c. Responsibility.—Planning, initiation, stimulating, and facilitating the off-duty education program is the responsibility of the Director, Special Service Division.

d. Correspondence study.—The facilities of the Army Institute (AR 350–3100) will be expanded upon mobilization to meet the increased demand for correspondence courses. In time of war or state of national emergency all courses must be approved as contributing to military efficiency; new courses are to be provided to meet the needs of the service. Arrangements with publishers and educational institutions to give instruction by correspondence to Army personnel, to purchase text material or syllabi for use in Army Institute courses, and to arrange for reproduction of text material or syllabi written or developed by publishers and educational institutions will be expanded.

e. Group instruction.—Upon mobilization facilities for group instruction will be extended. Arrangements for developing and supplying teaching aids, written, visual, and auditory, will be expanded as deemed advisable. Liaison will be established with foreign educational officials and foreign universities and colleges to make foreign educational facilities available to Army personnel.

30. **Army library service.**—*a. General.*

(1) The Army library service in mobilization will be an expansion of that service as operated in peacetime.

(2) The size of libraries and personnel employed therein will be appropriate to the command served (AR 850–80).

(3) Books for the Army library service will be procured and distributed by the Director, Special Service Division, or by commanding generals of service commands, as may be indicated.

[fol. 321] APPLICANT'S EXHIBIT "C"

[Restricted]

ARMY TALK

ORIENTATION FACT SHEET 51

War Department—Washington 25, D. C. 23 December 1944

What This Orientation Deal Is All About

Note to the I and E Officer: The subject of this week's issue, originally planned for 25 November, brings the remaining subjects as published in ARMY TALK 45, 11 November, back to their originally scheduled dates. This issue explains what Army orientation is and why we have it. The discussion should emphasize: (1) American Army orientation, unlike Axis indoctrination, is based on the principle of promulgation of truth; (2) It seeks to have the men achieve clear understanding of issues through participation in free and open discussion; (3) It is designed to make our men "the best informed soldiers in the world" so that we may handle ourselves better as soldiers in the war and as citizens in the peace years ahead. Additional discussion questions are grouped in a separate box.

THE people of the United States were mentally unprepared for the war. When it came, it was described as a "stunning blow". We suddenly realized that the Axis powers were out to "get" us.

We were angry. We easily grasped the fact that we had been attacked, but many of us were confused as to *why* we were attacked. We realized that we had to defend ourselves. But many of us did not fully understand the sacrifice and devastation that a total war for survival involved.

The Axis knew we were unprepared and tried to make the most of our unpreparedness. They knew we didn't want war. They knew that we had no ambitions for world domination, or "lebensraum", or enslavement of unarmed minorities, or enthronement as a "master race". Knowing this, their propagandists sought to divide us and weaken our will to fight, to sell us the idea that the war was the fault of our leaders and not of the Axis, to confuse us so that we could not achieve an all-out effort. They had succeeded in

confusing and dividing some of the Poles, French, Chinese and the rest of their victims. They had high hopes of confusing and dividing us.

Enemy propaganda can only succeed in its purpose if we do not understand what is actually at stake in this war. And even if Germany and Japan did not attempt to infect us with their propaganda, it would still be important for us to understand why we must sweat out our time in the Army. Whether in combat or toiling at endless supply tasks we should know why the danger and the drudgery are necessary. Understanding strengthens our ability to overcome the Axis soldier and to meet squarely the problems we'll face once the fighting stops.

Our enemies' last hope is based on the fact that many of us are uncertain in our own minds as to what is at stake. They still dream that, because of weariness or confusion or both, we will give them terms which will enable them to start World War III.

Know The Score

(Question: What do we mean by orientation in the Army?)

Usually we think of orientation in connection with maps. When our map is properly lined up with familiar objects on the ground and the cardinal points of direction, by which we can find our position on the map, we are "oriented". We have everything in the right perspective, and by glancing at our map, we can correctly tell where we came from, where we are, and what lies ahead.

In terms of the present discussion, orientation is the process of helping us to find out where we stand, who our friends are, who our enemies are, what must be done to deal effectively with our post-war problems, and why. It tries to offer us facts and knowledge which will help us meet new situations with maximum effectiveness, whether we run into new situations on the battlefield, in an isolated station, in a routine Army job, or after returning to civilian life. Orientation tries to help us "know the score".

Orientation must be a continuing process. Just as we constantly orient our map while traveling, so must we constantly line up the facts so that we'll always know where

we stand on events that affect us. The catch is that all armies claim to keep their men oriented. Obviously, some [fol. 322] one is lying, since the real facts cannot support

AN "ORIENTED" GERMAN

(Letter written by Gottfried Lesko, German flier)

"Maybe you are American. One boy of my crew would have said that you are infected with the bacillus of democracy. I think everything you write about democracy is just phrases. What is liberty, anyhow? I for one have always found that it is much easier if someone tells you what to do. The point is, where would we be if everybody in the world were to make his own life? We don't know what's good for us. I don't only mean that it's better for the whole nation when one man decides. It's also better for each of us. It's easier to do a job if you are told what to do than to figure it out for yourself."

both sides of a conflict. Let's look at some typical German and Japanese "orientation" methods.

2 plus 2 = 6

(Question: Why doesn't the Axis tell its soldiers the complete truth?)

Goebbels, the German propaganda chief, once boasted that "we have made the Reich by propaganda". Japanese domestic broadcasts state "those who are born in Japan are born of God". The Axis soldiers have been thoroughly indoctrinated along "master race" lines, and from that false starting point the enemy's "orientation" programs "take off".

Today we have captured a sufficient number of prisoners and documents to see what that means. The severe defeat, suffered by the Japanese Navy in October was dished out to the Japanese troops as a great victory.

German prisoners captured last July in Italy knew nothing about the then current Russian offensive. Japanese taken prisoners in the Pacific thought they were fighting in California and Texas. German prisoners brought to this country insist that New York City has been leveled to the ground. By radio, newspapers and formal lectures, Germany and Japan have tried to maintain in their troops the

illusion of approaching victory. Both facts and opinion have been ruthlessly suppressed to keep the Axis soldiers from knowing the real score.

Illusions Versus Truth

The chief difference between the orientation of our Army and that of Axis forces arises from the difference between democracy and fascism. The Axis, having created their aggressor states by selling lies, cannot suddenly change to telling the truth.

We have no such problem. Our government never told us we were created to rule the world. The policy of our Army (War Department pamphlet 20-3) declares that "the fundamental principle of American information about the war is that we will speak the truth . . . there is never any justification, in any circumstance, for the employment of material which is known to be false".

Contrast this with Hitler's avowed policy set forth in Mein Kampf: "A definite factor in getting a lie believed is the size of the lie. The broad mass of the people, in the simplicity of their hearts, more easily fall victims to a big lie than a small one."

With this in mind, German political officers have told their troops that the allies intend to marry all German women to members of the occupying troops, while the Japanese blithely continue to inform their men that the American Navy has been "annihilated"—by now for the fourth time!

While the Axis feeds its men illusions, our Army has been steadily giving us facts, encouraging us to understand the essentials of why we're here and what lies ahead.

Why Orientation?

(Question: Does it help a man to be a better soldier if he understands the score?)

The most important belief we can have is a sound faith in democracy, built on a conviction that every individual has certain rights that must be respected. These are basic concepts of decent human existence which our orientation program helps us to understand.

During a war we are all under special strain. We were

scorned by the Axis as "decadent" in our refusal to believe that the individual exists only for the State. Some of us were irritated at the delays made necessary by our democratic procedure. Once in the Army, we temporarily had to give up our individuality to work as a disciplined team toward the big goal. (We learned, for example, not to talk back—in an Army that fights to preserve freedom of speech for America.) It would be comparatively easy for our thinking to become muddled during a period of military reverses and prolonged personal hardships. Only by knowing the score can we keep events in their true perspective. There are six basic orientation objectives.

Six Orientation Objectives

1. *Why We Fight*

On 7 December 1941 we knew we had been attacked but we were troubled over *why* we had been attacked. In a [fol. 323] democracy like ours it is not enough to fight the enemy merely because we've been ordered to. Our fighting has a purpose, and the better we understand that purpose the quicker we'll fight the war through to a successful end.

The reasons why we fight are becoming increasingly important as our offensives against Germany and Japan drive nearer our ultimate objectives. By understanding these reasons we can understand the necessity for *complete* defeat of Germany, and *complete* defeat of Japan. Through orientation we get a true view of events and can figure out where we fit in the big picture.

2. *Know Your Enemies*

It's common sense to learn to size up your opponent. The more each of us knows about the enemy's tactics, tricks, mentality, beliefs, armament and training the easier we'll be able to overcome him. Only by knowing our enemy can we take advantage of his weaknesses and counter his strong points. This is just as true for the buck private as for the G-2 of the General Staff.

We always made it a point to know all we could about our opponent in a sports contest. Army orientation tries to give us the same sort of advance information, but with one difference. A game has rules and ends with the referee's

whistle. In combat there are no rules, and we fight until the other guy's knocked out. The more each of us knows about our opponent the better able we'll be to beat him.

3. *Know Your Allies*

We're far from alone in the war against the Axis. Nearly all the civilized nations, including some a lot of us never heard of before, are with us in fighting Germany and Japan. Some, like the Soviet Union and Great Britain, have suffered far more than we have. Without them on our side we would be far from the victory toward which we're moving in Europe and we would not have come as far as we have in the Pacific.

Knowing these allies of ours serves a two-fold purpose. Since thousands of us work side by side with them, we gain efficiency and closer cooperation by a sympathetic understanding of their problems and national characteristics. In the post-war years, we must continue this close cooperation if we are to hope for a lasting peace.

4. *News—Its Significance*

Knowing the news and its significance permits us to know what the score *really* is and not what some enemy spellbinder would like to have us guess it is.

Our Army wants the American soldier to be the best informed soldier in the world not because of the volume of information available to us but because of the accuracy of the information that we do get.

American troops are not led to believe they are fighting in Berlin when they're fighting in Aachen. We are not led

JAPANESE ORIENTATION

(Japanese "instructions for those who are in the battle lines".)

"Rectify your mind, cultivate your body and believe in the divine spirit of the emperor—with the protection of the divine spirit you are ashamed of nothing. These are the instructions from the divine spirit. In the fighting lines you must remember the will of your parents and the great principles of loyalty and do what your great ancestors had expected of you. All those of you who are in the Armed Forces must remember these words and must perfect your duty as soldiers so that you will swim in the bathtub of his imperial graee."

to believe we are attacking the Japanese homeland when we invade the Philippines. We know where we stand in the war, because we get the straight news, *good or bad*. We don't get Axis-style fairy stories.

Our individual appraisal of the news calls for clear, level-headed thinking. We know that we have Germany on the brink of defeat but we must remember that we still have plenty of hard fighting to do. We must realize that we must next concentrate all our energy on Japan and be prepared for the possibility of a long fight. Knowing the news and the meaning behind it is our best way of knowing the score —right up to date.

5. *Pride In Outfit*

The soldier who thinks the whole Army is snafu, and his outfit is no good, and its mission is useless, and his job is unimportant—is very likely to be unhappy and unable to do his best job. The fostering of pride in outfit is a responsibility of all echelons of command.

Army orientation, generally speaking, can assist the unit commander in fairly broad terms, pointing up the over-all efficiency of the Army itself, the importance of each of the various arms and services and the over-all success which has been achieved. It is up to the leaders of units, locally, to help the men see the link between the job of the outfit and the big successful operation. Without this, Army orientation is likely to fail. It must be supplemented within the local command if the total job is to be done.

6. *Faith In America*

Faith in the United States and its future is not just a high-sounding phrase. It's the faith that makes this entire war worth fighting for, primarily it's a belief in ourselves and our people back home.

Our Army orientation does not attempt to impose on us a [fol. 324] blind faith which closes our eyes to faults such as unemployment, poverty, race riots and other unsolved problems. None of us is fighting to preserve those ugly marks

on our record. We're fighting to keep the goods things in America for ourselves and to change the bad things as we see fit—without the assistance of a gauleiter (Gow-Liter) from outside.

Once Germany and Japan are licked, we'll come home to problems aggravated by the war. Millions of men will be demobilized just as quickly as the services can spare them and provide the necessary transportation facilities. When that happens, we'll have to readjust our personal lives to civilian status. As citizens we must be prepared to participate in supporting plans for assuring world peace and returning America to peacetime prosperity.

Our problems will be many, and complex. Not all of them can be solved overnight. Our Army orientation cannot solve these problems for us, but can only help us understand the nature of the issues that we'll confront.

Our Army Program

The basis of our orientation program is the distribution of straight information from which we can interpret events. This is done in various ways.

Nearly all of us are familiar with the Army's "Why We Fight" films. Through these and other movies we have been given sharp, authentic pictures of many of the issues at stake. We have become better acquainted with our allies. We have learned about our enemies.

Wherever American troops are stationed, and whenever battle conditions permit, a brief, oral weekly summary of the news is required by WD Circular 360, which has set aside one undivided hour per week for the sole purpose of orientation. The remainder of the time is devoted to a discussion of the news or some special topic of general interest.

Many of these discussion topics are based upon an Army orientation guide known as ARMY TALK prepared by officers and enlisted men with extensive service in the U. S. A. and overseas. This publication, available to discussion leaders, carefully analyzes specific subjects and gathers the facts in the case. Unpleasant truths are presented as well as the favorable, so that the soldier can grasp an issue in its

entirety. Armed with these facts, a group leader conducts a discussion among his men who are encouraged to express

THE QUESTION BOX

1. *Does the Army need to orient its men?*
2. *Do the men need it?*
3. *Does orientation help us as fighters?*
4. *Will it help us as citizens?*
   a. *To get a job and make a place for ourselves in the community?*
   b. *To join effectively in public decisions?*
5. *Is it just a lot of propaganda?*
6. *Does the Army try to get information to us?*
7. *What methods does the Army use to help us understand the issues?*
8. *Does the Axis deliberately misinform its men?*

their own views. In this manner, doubts and misconceptions are cleared up by frank, open discussion.

Fighting With Our Eyes Open

Our method of gaining an understanding of the cause, progress, and effects of this war is probably more painful to us than the Axis system of propagandizing their troops. We have been aware of our defeats as well as our victories. We don't glorify war; we recognize it as something rotten and filthy as well as grimly necessary. We realize that to win the last battle will not automatically solve all our future problems.

But we have not been sold a bill of goods about our invincible armies that "never, never have retreated"; we have not been told that war is beautiful and a soldier's heaven awaits us if we die in battle; we have not been put on pedestals to lord it over the rest of our fellow-men, and promised Utopia once the war is won. These are illusions the Axis feeds its men.

Our orientation program is founded upon simple truths to which all of us can testify. We believe in democracy and at the same time recognize faults in its operation. We believe we have certain inalienable rights as individuals, even though as soldiers we obey orders and have tempo-

rarily given up some of those rights in order to assure their performance in the future.

Army orientation simply tries to strengthen these beliefs by helping us to understand the score.

Next Week: GUERRILLA FIGHTERS—MOSTLY ON OUR SIDE

[Restricted]

Prepared by Army Orientation Branch, Information and Education Division, ASF [A.G. 353 (16 Jan. 44).]

[fol. 325] APPLICANT'S EXHIBIT "D"

National Jewish Monthly, July-August, 1944

WHY I AM IN THIS FIGHT

A July 4 Statement By a Jewish Fighter For Freedom

By Lt. Raphael Konigsberg

Raphael Konigsberg is a first lieutenant in the Medical Administration Corps of the U.S. Army. His home is Los Angeles, where his wife and baby daughter live and where he was a social worker for ten years at the Los Angeles Sanatorium. He has just gone overseas. His three brothers are also in the armed forces overseas, one as an Air Transport Command pilot in India, one as a bomber pilot in Italy, and the third as an artillery gunner in the Canadian Army in England.—*Editor.*

July-August, 1944

EVERY person in uniform asks himself at some time: Why am I in this fight? What is my stake as an individual in this total war? And sooner or later each one of us must give himself an answer.

It is not enough to say: "Hell, I was drafted," or even, "I enlisted." While it may be that the soldier who enlisted has a clearer, more positive reason for being in the Army, nevertheless the draftee can also find deeply personal and satisfying reasons for being in uniform—if he understands that in a democracy it is the people (of whom he is one) who draft themselves to serve their country in its hour of peril.

In answering this question for myself I find that the simplest, most accurate reply is: I am in the army because I am selfish.

I want and need certain things which I know I will never have unless the United Nations win this war; things which I know I could never enjoy (even if they had been won and made available to me) unless I did my share in securing them for my side.

I want economic security for my family and myself. A minimum of economic security is the basis of everything else: hungry, desperate men cannot be good parents, good neighbors or good citizens; they cannot enjoy life or contribute to it.

I want also to feel free to follow certain professional and cultural interests. I know that if Fascism wins, all this will

be impossible. So I must help defeat Fascism. I know I cannot do this alone. (I have never been seduced by that diseased shibboleth "individualism"—which has retarded our national growth for generations.)

I want to live like a man, not like a slave; to live in dignity while striving for the realization of the promises of manhood and civilization. I cannot expect others to fight and die for this liberty and hand it to me.

I want the United States of America to be a mighty democratic nation. Only such a land can guarantee to me and mine the things we hold indispensable to a useful, honorable life. I am a Jew.

I know that democracy can be lost, and how it can be lost. I have learned that if Fascism comes here I myself will be to blame—if I have not done everything in my power to prevent it. If I do the best I can now, I will not have to reproach myself later, win or lose. I feel personally responsible for my country's fate. I want to help shape America's future.

I want to be a good citizen. I happen to believe that man does not live for himself alone, that the rewards which really count in life come not from material gain and personal power, but from service to the community. The field of service I have picked for myself is that of good government.

A good citizen believes that his government has the right to ask a price of him for the privilege of citizenship—such as fighting for it when it is in danger—and he is eager to pay that price.

I want recognition—the kind accorded a good neighbor and a good citizen for carrying his share of the load. This is for me a basic psychological need. In one way or another we all want to be appreciated, to feel useful. For we all recognize—whether we admit it to ourselves or not—that life must mean something more than eating, bickering, dying, that it must be for some more honorable purpose than beating the other guy in a deal and showing up the Joneses.

Human beings must fill this void in their lives, this deep hunger for an assurance of worthiness. Some do it with charitable work; some by joining clubs; some by losing

themselves in a hobby; some give way to heavy drinking; some are very fortunate in finding all their satisfactions in their chosen life's work.

My profession is social work, the furthering of human welfare, which ultimately means insuring good government —and which now means crushing Fascism, fighting to build such an enriching socially-constructive way of life in our country that this void will not exist in the hearts and minds and souls of Americans, of people of good will throughout the world.

The fact that the United Nations are now making a full-time job of my chosen work is to me the vindication of my whole life.

[fol. 326] Applicant's Exhibit "E"

The State Bar of California

Committee of Bar Examiners

Southern Subcommittee

Los Angeles

In the Matter of the Application of Raphael Konigsberg.

List of Persons Testifying to the Character of Raphael Konigsberg.

Attorneys:

Paul Major, 109 W. 7th St., San Pedro.

Herbert W. Simmons, Jr., 315 W. Vernon Ave., Los Angeles.

Mortimer Vogel, 1250 Wilshire Blvd., Los Angeles.

Businessmen:

Albert C. Bricker, President, Schneider & Bricker, 2324 W. 8th St., Los Angeles.

Aaron Fefferman, Treasurer, Beckman, Hamilton, Inc., 365 S. Fairfax Ave., Los Angeles.

H. Claude Hudson, President, Broadway Federal Savings, 4329 S. Broadway, Los Angeles.

David Melinkoff, Retired, 3783 Effingham Pl., Los Angeles.

Harry Rorick, Ray T. Ebert Co., 922 N. Formosa Ave., Los Angeles.

Max Schechter, President, Plyline Mfg. Co., 5525 McKinley Ave., Los Angeles.

George Stiller, President, Stiller-Rouse, 6399 Wilshire Blvd., Los Angeles.

James L. Tuma, Sec'y-Treas., US Geophysical Corp., 6912 Hollywood Blvd., Los Angeles.

[fol. 327] Nat Zausner, President, Portion Foods, Inc., 200 S. Lake St., Los Angeles.

Doctors:

Diego Bermudez, M.D., 132 N. Soto St., Los Angeles.
H. I. Lee, M.D., 6333 Wilshire Blvd., Los Angeles.
A. E. T. Rogers, 1665 Irivine Ave., Costa Mesa.

Ministry:

Rabbi Jehudah M. Cohen, 900 Hilgard Ave., Los Angeles.
Rt. Rev. Msgr. T. J. O'Dwyer, 1531 W. 9th St., Los Angeles.
Samuel Tierman, Asst. Secy., Wilshire Blvd. Temple, 636 S. Hobart Blvd., Los Angeles.

Professors:

Ronald F. Brown, Chairman, Dept. of Chemistry, Univ. of S. Calif., Los Angeles.
Pendleton Howard, School of Law, USC, Los Angeles.
Victor S. Netterville, School of Law, USC, Los Angeles.

Social Workers:

Chauncey A. Alexander, Exec. Dir., S. Cal. Society-Mental Hygiene, 3067 W. 7th St., Los Angeles.
Nonette Batavia, 9800 Vidor Dr., Los Angeles.
Joseph Esquith, Field Dir., Jewish Centers Assn., 590 N. Vermont Ave., Los Angeles.
Harry I. Freedman, Asst. Dist. Supt., State Dept. of Educ., Bureau of Voc. Rehab., Los Angeles.
Zebulon L. Gulledge, State Dept. of Educ., Bureau of Voc. Rehab., Los Angeles.
Helen Hackett, Asst. Exec. Secy., Welfare Council of L. A., 729 S. Figueroa St., Los Angeles.
Esther Nasatir, Act'g Dir., Mt. Sinai Clinic, 207 N. Breed St., Los Angeles.
Jeanne G. Young, Dir. Med. S.S., Cedars of Lebanon Hosp., 4833 Fountain Ave., Los Angeles.

[fol. 328] *Other Professional:*

Morris Browda, Assoc. Editor, Calif. Jewish Voice, 406 S. Main St., Los Angeles.

Gerald Kraemer, Reg. Pharm'st, 1411½ Pointview St., Los Angeles.

Nathan Paul Chief Techn'n, City of Hope, Duarte, Cal.

Other Persons:

Mrs. Louis H. Waldeck, 6410 Lindenhurst Ave., Los Angeles. (Was member of executive board of Citizens Committee for Better Education which sponsored Konigsberg's candidacy for L.A. School Board election in 1947.)

Mrs. Jean Sieroty, 1002 N. Rexford Dr., Beverly Hills.

Mrs. Thomas E. Workman, 678 Lorraine Blvd., Los Angeles.

NOTE: Included also are letters from five social workers and an attorney (from among the many) written on Konigsberg's behalf when he was dismissed from his post with the State Relief Administration in 1939. They are offered here because they are the opinions of leading persons in the community at the time, with whom Konigsberg was closely associated, when his character was in issue.

C. Gardner Bullis, Attorney, 605 W. Olympic Blvd., Los Angeles.

Mathew P. Adams, Exec. Secy., Children's Home Soc., Pasadena.

Harry F. Henderson, Former Exec. Secy., YMCA, Los Angeles.

Ernestine Lewin, L. A. County Probation Dept., Los Angeles.

Mary Stanton, Exec. Secy., Council of Social Agencies, Los Angeles.

Dorothy Wysor Smith, Exec. Secy., Travelers Aid Soc., Los Angeles.

[fol. 329]

MAJOR & MAJOR

Attorneys at Law

109 West Seventh Street

San Pedro, California

TErminal 2-1121

Paul Major Sam Major

January 6, 1954

To the Committee of Bar Examiners:

I have known Mr. Raphael Koenigsberg for about six years, both prior to and after his connection with the tuberculosis sanatorium at Duarte, and throughout the time that he was studying law preparing himself for the bar examination.

My recommendation here is not lightly given. For four years I taught law at the Pacific Coast University and gave a quiz course on three different occasions. I have had many students consult me about personal problems in connection with their applications for taking the California bar examination. As a consequence, I feel that I am not without some experience in judging the characters and abilities of bar applicants in general.

I recommend Mr. Koenigsberg unreservedly as a person of high moral principle and character. He has an excellent reputation and should be a real credit to the bar. He is a much more profound person than the average bar applicant and exhibits a social consciousness which, in my opinion, is unfortunately too rare among applicants.

I fully expect that he will have no difficulty making a passing grade.

Sincerely,

Paul Major

PM:dh

[fol. 330]

HERBERT W. SIMMONS, JR.
Attorney and Counselor at Law
315 West Vernon Avenue
Los Angeles 37
ADams 7213

December 18, 1953

Committee of Bar Examiners
Los Angeles, California

Re: Raphael L. Koenigsberg

Gentlemen:

I have known the above named person for a period of approximately four years. My acquaintance with him has been both on a business and social basis.

During my acquaintance with him, I have had many opportunities to observe his personality and character.

I can say, without any mental reservation, that he has all the characteristics which I personally think are necessary to a good law practitioner. I find his intelligence, honesty and integrity to be of the highest calibre.

If I can be of any further assistance to you in this matter, please don't hesitate to contact me.

Respectfully yours,

Herbert W. Simmons, Jr.

HWS:bp

[fol. 331]

MORTIMER VOGEL
Attorney at Law
1250 Wilshire Boulevard—Suite 601
Los Angeles 17, California
MIchigan 3655

Dec. 28, 1953

Committee of Bar Examiners
440 Rowan Building
458 South Spring Street
Los Angeles, California

Gentlemen:

At the request of Raphael Konigsberg, I am writing this letter. I have known Mr. Konigsberg for several years and have met both his wife and children. I have always found him of the highest moral character. I know that he is sincere, trustworthy and righteous. There is no question or doubt in my mind that he is of good moral character, and has the characteristics necessary to measure up to the highest standards of any member of the California Bar.

If there is any additional information that you may desire, I shall be happy to try to furnish same.

Very truly yours,

Mortimer Vogel

MV/KK

[fol. 332]

BECKMAN, HAMILTON &
ASSOCIATES, INC.

Advertising

365 South Fairfax

Los Angeles 36, California

WEbster 0106

December 16, 1953

Committee of Bar Examiners
Los Angeles, California

Dear Sir:

I have known Raphael Konigsberg for approximately fifteen years, both socially and in business dealings. He has at all times conducted himself ethically and I would consider him to be especially suited to the practice of law. He is a good family man and has no bad habits of which I am aware.

Very truly yours,

Aaron Fefferman,
Treasurer,
Beckman, Hamilton &
Associates, Inc.

AF/ks

[fol. 333]

SCHNEIDER & BRICKER
Insurance
2324 West Eighth Street
Los Angeles 5, California
DUnkirk 2-7331

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has asked me to write you with regard to my opinion of his character and ability, and I am pleased to have this opportunity to do so.

I have known Mr. Konigsberg for approximately eight years as a man of integrity and of the highest moral character, concerning which, to my knowledge, there has never been any question. Throughout the years I have known Mr. Konigsberg he has impressed me as an unusually intelligent and capable person eminently suited for practice in the legal profession.

I trust this is the information you require and that you will not hesitate to let me know if I can be of further assistance to you in this matter.

Very truly yours,

Schneider & Bricker
Albert C. Bricker

ACB:sa

[fol. 334] BROADWAY FEDERAL SAVINGS AND LOAN ASSOCIATION OF LOS ANGELES

4329 South Broadway

Los Angeles 37, California

ADams 3-7246

H. Claude Hudson, President

Zella M. Taylor, Secretary

December 18, 1953

Committee of Bar Examiners
% Edward Mosk
6305 Yucca Street
Hollywood, California

Gentlemen:

About six years ago I met Mr Konigsberg under very favorable circumstances. We were both candidates for the Los Angeles City Board of Education. During the period of the campaign I had an opportunity to learn a great deal about the ideals and aspirations of my associate candidate. Over a period of six months our discussions and exchange of opinions were most cordial and intimate. In his public statements and private remarks to me I had an opportunity to observe him. During this period of time I never heard him make a statement that would make me feel that he was not a man of strong character and a believer of democracy and the American idea.

I have occasionally visited his home since the campaign and I am convinced that he is morally fit for the practice of law and an American who is desirous of social progress. I consider it a privilege to address this communication to you.

Sincerely yours,

H. Claude Hudson, D.D.S., L.L.B.

HCH:jj

[fol. 335] December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I appreciate the opportunity of writing to you at the request of Raphael Koenigsberg.

My first acquaintance with him goes back to about 1939. Although first impressions are not always infallable, in this case I venture to say my initial judgment still stands.

During the last two decades, Mr. Koenigsberg has been a frequent visitor at our home. I have had occasion to see and hear his reactions under various circumstances. Emotionally, as well as intellectually, he is well balanced, level headed, and possesses a boundless reserve of integrity. These characteristics, in my humble opinion, are indispensable in a person planning to practice in the legal profession.

Hoping you will give favorable consideration to Mr. Koenigsberg, I am

Very truly yours,

David Melinkoff

[fol. 336] COST-CUTTING PACKAGING

With Jiffy Padded Shipping Bags, Pads, Sleeves

RAY T. EBERT COMPANY

922 North Formosa Avenue

Los Angeles 46, California

HOllywood 3-5684

December 14, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have known Mr. Raphael Konigsberg for the past ten years and can recommend him without reservation as being a highly honest, reliable and ethical person.

I think that he would make an excellent lawyer and undoubtedly will contribute a great deal to the profession.

If I may be of any further assistance, I will appreciate your calling me.

Sincerely yours,

Harry Rorick

HR/jj
cc: Edward Mosk
Raphael Konigsberg

[fol. 337] PLYLINE MANUFACTURING COMPANY

December 24, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have known Raphael Konigsberg for the past ten years, and would vouch for his character and citizenship.

I know him as a responsible family man, and as a person who has taken a keen interest in civic affairs that affect our community. His integrity, his genuine in-

terest in people, and his active participation in community affairs, are all attributes which I feel would make him an outstanding attorney and a credit to the legal profession.

Very truly yours,

Max Schechter

MS:RA

[fol. 338] CITY OF HOPE MEDICAL CENTER

Duarte, California

Department of Laboratories

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have known Raphael Konigsberg since November 1946 when I entered employment in the Clinical Laboratory of the City of Hope. I have found him sincere, responsible, and extremely honest. He has given himself full heartedly to every project he has undertaken and to any individual who came for advice or help.

His character is excellent and I believe he would make an excellent lawyer.

As Director of Social Service at the City of Hope he was not only interested in the patients' problems but also anxious to see that the other facets of life such as cultural and religious were attended to.

[fol. 339] He has shown a strong interest in Community affairs such as Community Centers, Nursery Schools, and the Public School System.

I am a Clinical Laboratory Technologist employed at the City of Hope in the Clinical Laboratory as Chief Technician since 1946. I have lived in the Los Angeles area since 1923, except for my three years (1936-39) at the University of California at Berkeley and my five years in the army of the United States (1941-1946).

Since Mr. Konigsberg and I both lived in Los Angeles and worked in Duarte, we pooled our cars during 1946-1948 and hence saw each other daily. After I moved to Sierra Madre (1948) and Arcadia (1950) we saw each other frequently whenever I was in Los Angeles.

Trusting this information will be of value to you,

Sincerely,

Nathan Paul

[fol. 340]

PORTION FOODS INC.
200 South Lake Street
Los Angeles 4, California
DUnkirk 3-0993

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I consider it a privilege to be able to state my opinion about my friend Mr. Raphael Konigsberg.

Throughout the years of our friendship I have developed a high regard for his high principles, moral integrity and great ability. I should especially call your attention to his unselfish interest in civic affairs toward the improvement of the under-privileged groups in our community.

It is my considered opinion that Mr. Konigsberg will make an excellent attorney and will be a credit to the profession of law.

Very truly yours,

Portion Foods Inc.
Nat Zausner,
President.

NZ:m

[fol. 341]

SCHNEIDER & BRICKER
Insurance
2324 West Eighth Street
Los Angeles 5, Californ
DUnkirk 2-7331

53

Committee of Bar Examiners
Los Angeles, California

OMIT-DUPLICATION

Gentlemen:

Mr. Raphael Kon ...e to write you with regard to my op... ...er and ability, and I am pleased to ... ...ty to do so.

I have kn... ...g for approximately eight years as ... and of the highest moral charact... ...n, to my knowledge, there has never ... ... Throughout the years I have kn... ...g he has impressed me as an un- ... and capable person eminently suited ... the legal profession.

...s the information you require and that you ...tate to let me know if I can be of further to you in this matter.

Very truly yours,

Schneider & Bricker
Albert C. Bricker

ACB:sa

[fol. 342] STILLER-ROUSE & ASSOCIATES

Advertising and Public Relations

6399 Wilshire Blvd.

Los Angeles 48, Calif.

WEbster 3-5961

December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have been personally acquainted with Mr. Raphael Konigsberg for over ten years, having met and worked with him prior to his Army service during the war and also after his return to Los Angeles from overseas service.

It is my firm and sincere conviction that he would be a worthy addition to the legal profession because of his wide educational background, his integrity and his high character.

Coupled with these valued attributes is another I deem essential in an attorney—a warm and human personality, deeply interested in people, as people, and in helping solve their problems.

As indicated by the above letterhead, I am a partner in the firm of Stiller-Rouse and Associates, a general advertising agency.

Respectfully submitted,

George Stiller

GS:sk

[fol. 343] U. S. GEOPHYSICAL CORPORATION

Verified Seismic Survey

Airborne Geophysics

6912 Hollywood Boulevard

Hollywood 28, California

HO. 9-5415

December 31, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

This letter refers to the character of Mr. Raphael Konigsberg. I met Mr. Konigsberg in July 1949 at the City of Hope Sanitarium at Duarte, California where I was engaged in a survey of the personnel and administration of the Institution, to improve personnel relations and reduce costs.

It was necessary for me to become intimately acquainted with the executive and department heads, and evaluate their ability, performance and value to the institution.

Mr. Konigsberg was at that time Director of Services and Rehabilitation. The departments directed by him were of vital importance in administering the needs of the patients from the date of entry to the date of discharge. It required a great deal of humanitarian understanding and guidance to keep the patients contended, so vitally necessary to the recovery from tuberculosis.

I was in close contact with him for a period of six months and know that he has a very fine character, good judgment, and a trained mind for detail and research. I am satisfied that he is fully qualified to become a good and successful lawyer.

For the last fifteen years I have been a Business Consultant and Management Engineer specializing in administration, organization, personnel relations, costs, systems, etc.

At present I am Secretary and Treasurer of the U. S.

Geophysical Corporation, specializing in the location of oil and uranium resources in the United States, Canada and Mexico.

Yours very truly,

James L. Tuma

[fol. 344]

PORTION FOODS

200 South Lake

Los Angeles 4,

DUnkirk

Dec.

Committee of Bar Exami
Los Angeles, Californie

Gentlemen:

I consider it a p ole to state my opinion about my friend nigsberg.

Throughout t' friendship I have developed a high re a principles, moral integrity and great ab especially call your attention to his unse civic affairs toward the improvemen privileged groups in our community.

It is opinion that Mr. Konigsberg will make orney and will be a credit to the profess

OMIT-DUPLICATION

Very truly yours,

Portion Foods Inc.
Nat Zausner,
President.

[fol. 345]

DIEGO BERMUDEZ, M. D.
132 North Soto Street
Los Angeles 33, California
ANgelus 5983

December 14, 1953

Committee of Bar Examiners
Los Angeles, California

To whom it may concern:

Re: Mr. Raphael Konigsberg

This is to certify that I have known the above mentioned person since 1947. Mr. Konigsberg and I worked together at the City of Hope, Duarte, California where Mr. Konigsberg was director of the Social Service Department.

I am pleased to state that I believe Mr. Konigsberg is a person of high moral quality and, to the best of my knowledge, Mr. Konigsberg will be an asset to the legal profession as a practicing lawyer.

Very truly yours,

Diego Bermudez, M. D.

DB:bb

[fol. 346]

H. I. LEE, M. D.
6333 Wilshire Boulevard
Los Angeles 48, California
WEbster 1-4455

December 12, 1953

Committee of Bar Examiners
State of California
Los Angeles, California

Dear Sirs:

Mr. Raphael Koenigsberg has been known to me for the past 12 years, when we were both associated with the City of Hope Tuberculosis Sanatorium in Duarte, Cali-

fornia. At that time Mr. Koenigsberg held an administrative position as manager of the Sanatorium and in my capacity as the Assistant Medical Director I had occasion to become well acquainted with his ability and character.

In my opinion I have found his moral and ethical standards to be of the highest caliber. He possesses qualities of sound judgment and great initiative. Mr. Koenigsberg has impressed me as a man representing the finest ideals of Americanism and without qualification I approve his fitness for the practice of law.

Very truly yours,

H. I. Lee, M.D.

HIL:lk

[fol. 347] Committee of Bar Examiners

Los Angeles
California

Gentlemen:

This information is being forwarded for your consideration relative to Mr. Raphael Konigsberg, at his request.

I have known Mr. Konigsberg for approximately eight years, during which I was Assistant Medical Director, then Medical Director of the City of Hope Hospital, Duarte, California. Mr. Konigsberg served in the Social Service Department of that institution and under my supervision. Since I am no longer connected with the hospital and its personnel records are not available to me, I cannot supply you with the specific dates of his employment, but can say that the association extended over several years. During this period, he performed his duties diligently and conscientiously, and insofar as my knowledge goes, displayed satisfactory ethics and moral character. His eventual separation from this position came about as a result of an irreconcilable difference of opinion with the hospital's Board of Directors.

I trust that this information will be of assistance to you.

Very truly yours,

Arthur E. T. Rogers, M.D.

1665 Irvine Avenue
Costa Mesa, California

December 22, 1953.

[fol. 348] B'NAI B'RITH HILLEL FOUNDATIONS AT AMERICAN UNIVERSITIES

December 23, 1953

Committee of Bar Examiners
Los Angeles, California

Dear Sirs:

I am very happy to provide a character reference on behalf of Mr. Raphael Koenigsberg who has recently taken the State Bar Examinations. Mr. Koenigsberg has been known to me during the past fifteen to seventeen years, particularly during the period when he served in a number of executive capacities in the field of social work.

During my acquaintance with him, I have always regarded Mr. Koenigsberg as a person of exemplary character, genuine honesty and integrity, and thorough reliability. I have been impressed by his intellectual capacity and achievements, his genial and outgoing personality, and the splendid atmosphere which prevails in his home and in his filial relationships.

I unreservedly recommend Mr. Koenigsberg as a person who is morally and ethically qualified to serve as a member of the Board.

Sincerely yours,

Rabbi Jehudah M. Cohen
Pacific Regional Director

JMC:as

[fol. 349] DEPARTMENT OF HEALTH
AND HOSPITALS

Archdiocese of Los Angeles

1531 West Ninth Street

Los Angeles 15, California

December 14, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I am writing you on behalf of RAPHAEL KONIGSBERG, now residing at 2446 Echo Park Avenue, Los Angeles.

I wish to advise that I was well acquainted with him between the years 1936 and 1940. During that period he was employed as a member of the staff of the Council of Social Agencies in Los Angeles. He enjoyed an excellent reputation among all who were acquainted with him during those years.

Mr. Konigsberg resigned his position with the above-mentioned Council of Social Agencies and accepted an assignment with the newly-established State Relief Administration. Later he joined the armed forces and I assume he will present to you references from persons who knew him in the succeeding years.

I do not hesitate to recommend him to you. I am satisfied that he will measure up to the high requirements established for members of the legal profession.

Sincerely yours,

(Rt. Rev. Msgr.) Thomas J. O'Dwyer

TJO'D:S

[fol. 350] WILSHIRE BOULEVARD TEMPLE

Congregation B'nai B'rith

Wilshire and Hobart Boulevards

Los Angeles 5, California

December 16, 1953

"RELIGION—Our most constructive defense"

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

This letter is written in response to a recent request from Mr. Raphael Konigsberg to furnish your Committee with my appraisal of his character and qualifications.

I men Mr. Konigsberg more than 15 years ago at a time when he was being considered as Director of Social Welfare for the Jewish Consumptive Relief Association. As a result of the impression made upon our Committee, he was engaged and served most capably in this capacity for a number of years, until the outbreak of World War II, when he was granted leave to enlist in the United States Army. It is my information he acquitted himself creditably while with the armed forces, and following his discharge was reengaged as a social worker by the Association. My tenure as Trustee of the above mentioned institution terminated about 1948, as well as my contact with Mr. Konigsberg.

From my personal knowledge I would recommend this gentleman to you for consideration in granting him all privileges should he pass, believing he is of the caliber required to make an excellent lawyer who will serve his clientele conscientiously as well as in the observance of the ethical standards of the Bar.

Yours very truly,

Samuel Tierman

ST/fg

[fol. 351] UNIVERSITY OF SOUTHERN CALIFORNIA

3518 University Avenue

Los Angeles 7

December 22, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has asked me to write you concerning my opinion of his character and whether I think he would make a good lawyer. I am in no way qualified to give an opinion as to whether a given person would make a good lawyer or not. It is completely outside my field of interest.

I have known Mr. Konigsberg since 1946 when I made his acquaintance while I was a patient at the City of Hope and he returned to his position as Director of Social Service there. He was very enthusiastic, able and capable in his position and his ultimate discharge, in my opinion, was not in best interests of the City of Hope. Nevertheless, that event led him to reconsider his career in social service and to decide to enter upon the study of law.

Mr. Konigsberg is definitely a liberal and presumably with his law training would be particularly fitted for work on any legal questions involving organized charities and the welfare organizations, or perhaps labor relations. Mr. Konigsberg also is a man of rather definite ideas and not too much inclined to compromise on what he thinks is right. He served as an officer in Germany in the last war and I personally know of nothing which would cause me to doubt his loyalty to the U.S. In short, I have the highest opinion of his character and insofar as that is decisive, I think he would make a very good lawyer.

Yours sincerely,

Ronald F. Brown, Chairman
Department of Chemistry

RFB dh

Signed by his secretary in his absence caused by illness

[fol. 352]

PENDLETON HOWARD
Professor of Law
The University of Southern California
Los Angeles 7, California

December 17, 1953

Mr. Graham L. Sterling, Jr.
Chairman, The Committee of Bar Examiners
2007 Central Tower
San Francisco 3, California

Dear Mr. Sterling:

Mr. Raphael Konigsberg, an applicant for admission to the State Bar, has asked me to write a letter in his behalf.

My acquaintanceship and knowledge of Mr. Konigsberg are limited wholly to the time when he was a student in the School of Law of the University of Southern California, where he was a member of several of my classes. His attitude seemed to me that of a serious and sincere student of law. So far as I know, his moral character and integrity were not under question by either his fellow students or members of the faculty.

Faithfully yours,

Pendleton Howard

[fol. 353] UNIVERSITY OF SOUTHERN CALIFORNIA

3518 University Avenue

Los Angeles 7

School of Law

December 11, 1953

Mr. Graham Sterling, Chairman
Committee of Bar Examiners
Los Angeles, California

Gentlemen:

Mr. Raphael Konigsberg has requested that I write a letter on his behalf setting forth my impressions of him as a student at this law school. I am happy to state for you those impressions for whatever they are worth. I should make clear however that I have no knowledge which would go to the question of Mr. Konigsberg's general character, since my sole contact with him was that of teacher-student. I do not know him socially or in any capacity outside school.

Mr. Konigsberg was one of approximately twelve students in my class in Administrative Law during the spring term of 1953. In that capacity, I was able to observe his views as expressed in class and his reactions to the various problems arising in the Administrative Law field. As you will realize, Administrative Law cuts across many other areas of the law, including civil rights, property rights and other basic constitutional law problems which have a large measure of political philosophy at their base.

It was my impression that Mr. Konigsberg is a man with the courage of his convictions, but not one who holds those convictions blindly or with any but the most honest motives. He seems to hold the Constitution in high esteem and is a vigorous supporter of civil rights. But it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time to time of balancing the interests of the individual against the interests of society when the legislature takes action to protect society as a whole from

threatened dangers. Throughout our discussions—discussions in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussions. He indicated to me an open-mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen.

[fol. 354] Based solely then upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the bar.

Very truly yours,

Victor S. Netterville
Instructor in Law

VSN:bmc

[fol. 355] SOUTHERN CALIFORNIA
SOCIETY FOR MENTAL HYGIENE

3067 West Seventh Street

Los Angeles 5, Calif.

DUnkirk 7-8259

MEMORANDUM

TO: Committee of Bar Examiners, Los Angeles.

FROM: Chauncey A. Alexander.

SUBJECT: Raphael Konigsberg.

I have been asked by Mr. Raphael Konigsberg to forward to you a letter of character reference. I have known Mr. Konigsberg since 1940 in his various capacities in the social work field and through his participation in the professional associations of social work. Since I have been president of the Los Angeles Chapter of the American Association for Social Workers and in leadership there for many years, I have had occasion to know of the professional interests of many people in the Los Angeles Community. In my opinion Mr. Konigsberg is

devoted to the highest of professional standards and principles and is forthright in his expression and support of them.

In all the professional contacts that I have had with him, he has demonstrated a high standard of integrity and ability. I have had periodic occasion to participate with him in health and welfare agency committees, and he has demonstrated a devotion to democratic principles and participation.

I have had no occasion to be connected with his work on professional practices and hence am not in a position to make any judgments on that score.

If there are further specifics that I can provide you, please call upon me.

Chauncey A. Alexander

[fol. 356] 9800 Vidor Drive,

Los Angeles, December 15, 1953.

Committee of Bar Examiners,
Los Angeles,
California.

Gentlemen:

It is my understanding that Mr. Raphael Konigsberg has completed the necessary requirements to practice law in California, and that you would be interested in letters of reference, to establish his fitness to do so.

I first met Mr. Konigsberg approximately fifteen years ago when we were both employed as District Directors with the State Relief Administration. As social workers and administrators, we worked closely together, and I had ample opportunity to know him both professionally and socially.

Outstanding in my evaluation of him were his personal and professional integrity, his devotion to his work, and his interest and zealousness in conscientiously carrying out his responsibilities to the clients serviced by our agency.

His moral character has always been beyond reproach.

His responsibility as a family man is well established and this feeling has extended to his community.

As a psychiatric social worker, employed for many years in this community, I have no hesitancy in recommending Mr. Konigsberg for your consideration. I feel that he would bring many valuable assets into the practice of law.

Sincerely yours,

(Mrs.) Nonette Batavia
Psychiatric Social Worker

N
B
ls

[fol. 357] December 17, 1953

Committee of Bar Examiners
440 Roman Bldg.
458 S. Spring St.
Los Angeles, California

Gentlemen:

I should like to advise that I have known Raphael Konigsberg as a social worker from 1939 until the time he left the field to study for the Bar. He is a person of high moral character, straightforward and honest in his approach to all human problems. Conscientious, alert, well-informed, and articulate, he was always a leader in local social work and respected by its practitioners.

It is my considered opinion that Mr. Konigsberg will be a very fine attorney and a credit to the profession. I wish him every success in his new field and am sure that he will make as fine a contribution as he did to the field of social work.

I shall be glad to give any additional information which you may desire regarding Mr. Konigsberg. I can be addressed at the Jewish Centers Association, 590 N. Vermont Ave., Los Angeles 4, California. My title is Field Director.

Sincerely yours,

Joseph Esquith

JE:rl

[fol. 358] State of California

DEPARTMENT OF EDUCATION

Division of Special Schools and Services

Bureau of Vocational Rehabilitation

December 28, 1953

Committee of Bar Examiners
Los Angeles, California

Dear Sirs:

RE: Raphael Konigsberg

I have known Mr. Raphael Konigsberg for over ten years, both before he entered the army during World War II and again when he resumed his position as head of the Social Service Department at the Los Angeles Sanitorium, now the City of Hope.

During my frequent contacts with Mr. Konigsberg I found him to be responsible for his statements to the patients he served and to the agencies and individuals he dealt with in their behalf. He was always sincere in his efforts to better their conditions, and in developing programs for them, showing imagination and resourcefulness. At no time during my relationship with Mr. Konigsberg have I seen evidence of anything but excellent moral character.

I sincerely believe that with his strong desire to protect the rights of his fellowman and the integrity that he has, he will make an excellent attorney.

Very truly yours,

Harry I. Friedman
Assistant District Supervisor

HIF/ps
cc; Raphael Konigsberg
Edward Mosk

[fol. 359] State of California

DEPARTMENT OF EDUCATION

Division of Special Schools and Services

Bureau of Vocational Rehabilitation

December 16, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

This letter is written in the interest of Mr. Raphael Konigsberg.

I have known Mr. Konigsberg for approximately fifteen years, during which time he was a resident of the City of Los Angeles with the exception of time served in the Army during the war.

In all my associations with Mr. Konigsberg, he has proved a person of unquestioned integrity and sincerity, and one who has devoted considerable time and energy to problems of community interest. His broad professional experience has, in my opinion, been excellent preparation for the practice of law. I believe that Mr. Konigsberg will make an eminent contribution to the legal profession.

On the basis of Mr. Konigsberg's fundamental qualities of character, I am happy to recommend him to you.

Respectfully,

Z. L. Gulledge

ZLG:mn

[fol. 359a] December 15, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

It has come to my attention that Raphael Konigsberg is planning to take the State Bar Examination, having completed his work at the law school at the University of Southern California.

I first met Mr. Konigsberg when he came to Los Angeles about 1936 or 1937 as assistant in the Research Department of the Council of Social Agencies. I have not been in touch with him for several years, as he has not been actively engaged in social work but, to the best of my knowledge, Mr. Konigsberg is of good moral character and will, I am sure, make a good attorney.

Very truly yours,

Helen Hackett

HH:dt

[fol. 360] December 14, 1953.

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I have been asked to testify as to the moral fitness of Mr. Raphael Konigsberg with respect to the practice of law.

This is to certify that I have known Mr. Konigsberg as a fellow social worker and friend since 1935.

In my present position as Acting Director of the Mount Sinai Hospital and Clinic, I have had occasion to determine factually that he did a fine job in his capacity of head of social service of an allied agency, the City of Hope at Duarte.

Mr. Konigsberg and I were associated on various committees in connection with the American Association of

Social Workers. He commanded the respect of his fellow professional workers not only because of his effectiveness in the field generally and his leadership qualities but mostly because of his devotion to the cause of helping the undefpriviledged.

The community will be well served to have Mr. Konigsberg admitted to the practice of law. It gives me great please to write in his behalf.

Sincerely yours,

(Mrs.) Esther Nasatir,
2954½ N. Hyperion Avenue,
Los Angeles, 27, Calif.

[fol. 361] CEDARS OF LEBANON HOSPITAL

4833 Fountain Ave.

Los Angeles 29, California

December 16, 1953

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I am most happy to provide you with any information which will be of help concerning Mr. Raphael Konigsberg.

I first became acquainted with Mr. Konigsberg in his capacity as Director of Social Service, City of Hope Sanitarium, Duarte, California and served as a member of his staff in the capacity of supervisor from February, 1948 through August, 1949, at which time I left in order to take my present position as Director of Social Service at Cedars of Lebanon Hospital. During the time of our association I was most impressed by Mr. Konigsberg's sincerity and integrity, both as an individual and in his professional capacity. I found him to be a person of principled conviction and willing to defend his principles even at great personal sacrifice.

I was especially impressed with his concern for the total welfare of our patients and staff.

Sincerely yours,

(Mrs.) Jeanne G. Young, RSW
Director, Medical Social Service

JGY/nhg

[fol. 362]

THE VOICE

406 South Main Street

Los Angeles 13, California

Phone MIchigan 3867

Los Angeles, Calif.
Dec. 23, 1953

The Committee of Bar Examiners,
Los Angeles, Calif.

Gentlemen:

I am taking this opportunity to express to you my opinion of Mr. Raphael Konigsberg's fitness to be a lawyer because I am completely confident that he will be a valuable asset to the profession which he has chosen to follow.

In the fifteen years that I have known Mr. Konigsberg I have formed opinions of the man which make it a pleasure to tell you that he has the moral fitness and personal integrity to be a successful practicing attorney and at the same time having every characteristic which the Bar Association demands from its most successful members.

As music editor of the "Voice", my conversations with Mr. Konigsberg on cultural matters have proven to me that his broad and comprehensive knowledge of human affairs makes his future, as an attorney, one of brightness for the entire community.

Respectfully,

Morris Browda
associate editor, the "Voice"

[fol. 363]

Los Angeles, California

December 17, 1953.

Committee of Bar Examiners, Los Angeles.

Dear Sirs:

It has come to my attention, that one Raphael Konigsberg; is at present being considered for admission to the Bar for the practice of Law.

I hereby add my voice on his behalf. I have known Raphael and his family for the past 25 years, we were both students at Ohio State University and at the University of Southern California; and in my considered opinion he would be an asset to the Profession of Law.

To my knowledge he has always been kind, considerate, and understanding of people and their problems.

His admission to the Bar will contribute greatly to the already high moral standards of the legal profession.

very sincerely yours,

Gerald Kramer R.Ph.

411½ Postview St.
Los Angeles

[fol. 364] (Copy)

Received Sep. 6, 1956, Office of the Cler
U. S.

CITY OF HOPE MEDI
Duarte, Cal

Department of Laboratories

ıber 15, 1953.

Committee of Bar Exa
Los Angeles, Californ

OMIT-DUPLICATION

Gentlemen:

I have kno sberg since November 1946 when I ente the clinical Laboratory of the City of P d him sincere, responsible, and extrem s given himself full heartedly to ever dertaken and to any individual who car lp.

excellent and I believe he would make an

of Social Service at the City of Hope he was terested in the patients' problems but also see that the other facets of life such as cultural gious were attented to.

365] He has shown a strong interest in community

affairs such as community centers, nursery schools, and the Public School System.

I am a Clinical Laboratory Technologist employed at the City of Hope in the Clinical Laboratory as Chief Technician since 1946. I have lived in the Los Angeles area since 1923, except for my three years (1936-39) at the University of California at Berkeley and my five years in the army of the United States (1941-1946).

Since Mr. Konigsberg and I both lived in Los Angeles and worked in Duarte, we pooled our cars during 1946-1948 and hence saw each other daily. After I moved to Sierra Madre (1948) and Arcadia (1950) we saw each other frequently whenever I was in Los Angeles.

Trusting this information will be of value to you.

Sincerely, Nathan Paul.

[fol. 366] (Copy)

MRS. LOUIS H. WALDECK

6410 Lindenhurst Avenue, Los Angeles 46, California

Committee of Bar Examiners
Los Angeles, Calif.

Dear Sirs:

I have been asked by Raphael Konigsberg to tell you of my knowledge of his person over the period of my knowing him.

I first made his acquaintance in 1947 as a candidate for the Los Angeles Board of Education. As a mother of two children attending Public School, I took this election very seriously and found Raphael Konigsberg's platform to be an excellent one and his background one that would well-qualify him for such a post.

As a visitor only once at Duarte Sanatorium, I heard from a patient what a very fine job Raphael Konigsberg was doing as an Executive Social Worker in his work and programming to help the morale of the patients.

As a post-polio patient for over a year at Kabat-Kaiser Institute in Santa Monica, I met Raphael Konigsberg in the

[fol. 367] hall either in 1949 or 1950 and he explained he was there to discuss the possibility of a position there as Recreational Director in the field of Rehabilitation for post-polios. At the time, I remember wishing that he would take the job because I felt that here was a person of real warmth, understanding and compassion for people and that he would be a great asset in planning activity for the physically inactive.

I very humbly feel then that Raphael Konigsberg would make a fine lawyer because of the above reasons both as to his fine character and his rich background in the field of Education and Social Work.

Sincerely, Mrs. L. H. Waldeck.

December 21, 1953.

[fol. 368] (Copy)

JEAN SIEROTY

1002 North Rexford Drive—Beverly Hills, California

Jan. 2, 1954.

To the Committee of Bar Examiners,

I have known Raphael Konigsberg for a period of ten years and during that time found him honest, sound, and of good moral character.

Sincerely, Jean Sieroty.

[fol. 369] COPY

Law Office
CHARLES GARDNER BULLIS
606 West Olympic Blvd
Los Angeles, Calif.

Written at Ferriday, La.
March 15th, 1940

Mr. Raphael Konigsberg
Los Angeles, California

Dear Mr. Konigsberg:—

There has just come to my attention the news that you have been suspended from the SRA as District Case Supervisor. I am deeply and sincerely distressed at this act and will be happy to do anything which I can to aid in continuing to assure to our State and Community your services. I think you, and the Administration know that I have no ax to grind, no personal favors to repay and no person whom I have to advocate on a basis of just personal friendship. I have come to know of you and your work and your purposes solely thru my contact in our mutual service in Committee work of the Council of Social Agencies. Frequently you and I may have differed on items or practices or even philosophy but I have never found any occasion but to admire you in the high purposes, in the intelligent grasp and efficient execution of any task set before you. I know that you would so act in your discharge of duties with the S.R.A.; I am convinced it is your makeup and you would give the same high standard of service to any cause with which you are associated and always for good government and Americanism. I admire your courage and your individualism which is always expressed with the constructive trimmings of tact and tolerance. I honestly believe your dismissal would be a real blow at efficient and honest administration. I am so writing Mr. Walter Chambers whom I cannot believe is a party to this move and you

are free to use my name and this letter before any appeal Board or in any way that will retain you in the S.R.A. service. They could not find anyone better qualified and I would unhesitatingly 100% recommend you for any place which required ability and honesty and familiarity with the problems of the work you have been accomplishing. This letter is written with deep conviction and with absolutely no purpose except an honest consideration of the highest type of public service.

With sincere respects to you and every good wish,

Sincerely

Gardner Bullis
(President, L.A. Council of Social Agencies)

[fol. 370] COPY

Pasadena, California
March 13, 1940

Mr. Raphael Konigsberg
Los Angeles, California

Dear Mr. Konigsberg:

Very sorry indeed to learn that you have been suspended from your position as District Case Supervisor in the State Relief Administration.

I am at a loss to understand how it would be possible to bring the charges of "unprofessional conduct and disloyalty" against you, for one who has been in contact with you professionally for some time would know that you would never be guilty of unprofessional conduct.

We have always admired your painstaking and unselfish pursuit of the ideals of our profession of social work. Such fine professional conduct means that it would be impossible for you to be disloyal. On the other hand, I can understand perfectly how you might create criticism for yourself as a result of what I know to be your strong feeling against mixing politics and relief,—

which, of course, is the feeling of all good professional social workers.

I feel very certain that with a fair and just hearing that you will be found blameless.

With every good wish, I am

Very sincerely yours,

/s/ Matthew P. Adams
(Exec. Sec'y., Children's Home Society)

MPA:d

[fol. 371] COPY

HARRY F. HENDERSON
1703 Oak Street
South Pasadena, Calif.

March 13, 1940

Mr. Raphael Konigsberg
Los Angeles, California

Dear Mr. Konigsberg:—

Information has reached me that you have been accused of unprofessional conduct and that your integrity has been questioned. You and I have not worked in close relations since you resigned from the position you filled so ably at the Council of Social Agencies in Los Angeles. My knowledge of you there however plus the less frequent contacts since, convinced me that you are not that kind of a person. I have always regarded you as a person of the highest professional standards and I have never had occasion to change my judgment.

I deeply regret the present difficulties that have come to you. I am sure that any charges as listed above are the result of mis-information and that they can easily be cleared up when the facts are known. I hope all the difficulties can be quickly resolved.

Yours very truly,

/s/ Herry F. Henderson
(Former Exec. Director, Los Angeles YMCA)

[fol. 372] COPY

Los Angeles, California

March 12, 1940

To Whom It May Concern:

I am employed in the community and am a member of two important national professional bodies which sponsor the highest standards of social work—the American Association of Social Workers and the American Association of Psychiatric Social Workers. Last year I was the vice-chairman of the former local chapter and this year I am the chairman of the latter local group.

It has been my privilege to know Raphael Konigsberg in a professional capacity for the past several years, particularly in relation to executive committee activities of the American Association of Social Workers and Social Work Today.

Because of his live-wire, honestly direct and analytical approach to all manner of social problems, my observation has particularly focused on Mr. Konigsberg. Fortunately, he is a vocal person and has been able to articulate his views on issues of professional significance, having to do with worker-client relations, personnel practices, etc.

Though at times, as in all honorable groups, there have been differences of opinion, I have never known Raphael Konigsberg to deviate from the professional role, in its finest sense. He may have defended a measure vigorously but if counter expressions convinced him, he has been able to concede in a truly gracious manner without hostility or without leaving any odor of the recanter or sycophant.

I am impressed with the man's sensitiveness in the matter of human relations, his ability to think clearly and cleanly even when this thinking is in opposition to what may be considered at the moment, acceptable to a particular group.

[fol. 373] One gets to know a person rather well through committee work over a period of time. I believe profes-

sional conduct has literally and figuratively been the keystone of Mr. Konigsberg's relationships.

Very sincerely your,

/s/ Ernestine Lewin,
Psychiatric Social Worker
(L.A. County Probation Dept.)

EL:ELB

[fol. 374] March 4, 1939

Mr. Benjamin F. Culver
Acting Director of Personnel
California State Relief Administration
180 New Montgomery Street
San Francisco, California

Dear Mr. Culver:

I am in receipt of your letter of March 3 relative to Mr. Raphael Konigsberg who was employed, as stated in your letter, for the Council of Social Agencies in the position and at the salary which you give, and during the periods which you list.

In the spring of 1936, when I was establishing a Research Department in the Council, I searched diligently for a Director and an Assistant who were educationally qualified in social work and with such experience and personality as to qualify them for the organization of our department. I considered numbers of applicants and interviewed many, not only in Los Angeles but in Chicago, Washington, New York and Atlantic City, where the National Conference was being held that year. From this large group I selected Mr. Konigsberg who, at that time, was in the employ of the Federal government in Washington, D. C., in a research position. Mr. Konigsberg had excellent references which I have filed in my office and I shall be glad to have copies made if you wish them.

Ms. Konigsberg lived up to every expectation which I held for him and it was with real regret that I saw him leave us. The position to which he went offered wider

opportunities and much higher salary, and it was to his own interests and that of the community that he accepted the position with the Jewish Community Council of Los Angeles.

I admire Mr. Konigsberg for his intellectual ability, his conscientious devotion to his ideals and his work. I believe that the public service will be the better for his employment in it. If I can give you any further information about Mr. Konigsberg, I shall be pleased to do so.

Sincerely yours,

Mary Stanton,
Executive Secretary.

[fol. 375] March 22, 1940

Copy

Mr. Walter P. Chambers
State Relief Administration
155 W. Washington
Los Angeles, California

Dear Mr. Chambers:

As you probably know, I am a member of the committee which is undertaking to "sponsor" the case of Raphael Konigsberg and to gather in his credentials as a professional worker. In this connection I feel that I should write you regarding my own knowledge of Mr. Konigsberg and my impressions relative to the present difficulty.

I have been well acquainted with Mr. Konigsberg ever since he came to California (which has now been several years) and for almost all of those years I have been in close contact with him and whatever work he was doing. I share the very high opinion which is general throughout social work of Mr. Konigsberg's professional integrity and of his utter sincerity of character. I also know that he has had very solid training in his profession and that he has shown unusual and outstanding ability in every piece of work which he has undertaken. I would call Mr. Konigsberg an unusually talented and intelligent social worker.

As you will remember, I sought for Mr. Konigsberg's assistance as the head of one of my departments during the short period last year when I was loaned to the State Relief Administration as Director of its Non-Resident Bureau. I then had the opportunity to see for myself that Mr. Konigsberg was as well equipped and as able as I had previously thought him to be from my more remote contacts in various community enterprises in which we were both engaged.

During all of the years that I have known Raphael I have found him to be absolutely honest in the broadest sense of this word and to have a type of professional integrity which is unfortunately rare even in social workers —that type which will actually lead a person to sacrifice his position and be in danger of going hungry rather than stain his professional honor and violate his code of ethics. As we grow older it becomes more difficult to disillusion any of us but I should suffer a fresh disillusionment if I found that Raphael Konigsberg had acted in a manner which would cause shame or embarrassment to honorable professional colleagues! . . .

It would be horrifying to our whole professional group that a man such as Raphael Konigsberg should be suspended or dismissed at the behest of such a low type of political appointment as Mr. Waters seems to be. It is difficult to find a much cheaper type of person than a man who boasts to his whole staff that he has been appointed because of his contributions to the party.

It is my belief that you have not had an opportunity to give attention to this episode in all its ramifications, and that when you do so, you will immediately correct the injustice to Raphael Konigsberg by reinstating him in office. I wish to add my earnest request to that of many others in the American Association of Social Workers that you do this at the earliest possible moment.

Sincerely yours,

(Mrs.) Dorothy Wysor Smith,
Executive Secretary,
Travelers Aid Society
of Los Angeles.

[fol. 376] STATE OF CALIFORNIA

Department of Mental Hygiene
1320 K Street
Sacramento

February 4, 1954

Committee of Bar Examiners
Los Angeles, California

Gentlemen:

I recently received word from Mr. Raphael Konigsberg that he took the bar examination in October and that the Bar Examiners are interested in receiving references as to his character.

I have known Mr. Konigsberg for about 18 years and had fairly frequent contact with him during the earlier part of this period while we were both working as social work executives. I found him to be an unusually honest, sincere and dependable person, and one who was constantly dedicated to the welfare of the people he served. I was sorry to see him leave the field of social work where I feel he made a real contribution, but believe that he should bring to the profession of law an integrity and social perspective that would enable him to do a constructive job, primarily because of his interest in service rather than the material gains that might be derived.

I have not been in touch with him except sporadically during the past eight or ten years, but from the reports I have heard about his work it would seem that he has continued his good reputation.

Very sincerely yours,

Nathan Sloate,
Chief of Social Service.

NS:vb

TABLE OF AUTHORITIES CITED

Statutes	Page
Business and Professions Code, Secs. 6000-6154	7
Business and Professions Code, Sec. 6060(c)	8, 9, 11
Business and Professions Code, Sec. 6064.1	8, 9, 11
State Bar Act (Stats. 1939, Chap. 34, p. 347)	7

Rules	
Rules of the California State Bar, Rule X, Sec. 101	8

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RAPHAEL KONIGSBERG, *Petitioner,*

vs.

THE STATE BAR OF CALIFORNIA, AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA, *Respondents*

ANSWER OF RESPONDENTS TO PETITION TO REVIEW, UNDER RULE 59(b), RULES ON APPEAL, DENIAL OF APPLICATION FOR CERTIFICATION TO THE SUPREME COURT FOR ADMISSION TO PRACTICE LAW—Filed September 7, 1954

Answering the petition herein of Raphael Konigsberg, the respondents admit, deny and allege as follows:

1. Admit the allegations of Paragraph 1 of the petition that petitioner registered as a law student on the form prescribed by the Committee of Bar Examiners, and that said Committee is a duly established committee under the authority of the State Bar Act.

2. Denies the allegations of Paragraph 2 of the petition that the applicant fully, truthfully or accurately fulfilled all of the conditions and requirements established for permission to take the written bar examination in October of 1953. Respondents allege that petitioner was granted permission to take said bar examination upon the express understanding and condition that no determination had been made as to his good moral character and that no steps would be taken to certify him to this Honorable Court for admission to practice law in the State of California until and unless an affirmative determination of good moral character was made.

Respondents allege that petitioner did not fully, truthfully and accurately answer the following questions con-

tained in his registration statement as a law student in that in said statement [Ex. 4] petitioner made the following answers to the following questions:

"4. Moral Character and Fitness:

(a) Have you ever been summoned, arrested, taken into custody, indicted, convicted *or* tried for *or* charged with, *or* pleaded guilty to, the violation of any law or ordinance or the commission of any felony or misdemeanor (Include all such incidents no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court it nevertheless must be disclosed in your answer to this question)?

No

(Yes or No)

If so, state the facts completely but concisely for each case, and give the date, name and nature of the offense, name and locality of court, and disposition of each such matter.

* * * * * * *

(c) Have you ever been a party to or had or claimed an interest in any civil proceedings?

No

(Yes or No)

If so, give details.

* * * * * * *

(j) Is there any incident of a derogatory nature in your life not called for by the foregoing questions which may have some bearing on your character and fitness to practice law?

None

(Yes or No)
If so, state facts fully but concisely."

But, in petitioner's Bar Application [Ex. 5] his answers show that he was guilty of seven traffic violations, had been a party to a Small Claims Court action and had made appearances before the "Tenney Committee" and the "Dilworth Committee" in connection with his association with certain communist front organizations. All of these matters occurred prior to the filing of the Registration Statement and should have been included in a full, truthful and accurate answer of the questions listed above.

Respondents allege on information and belief that petitioner was associated with the communist party and participated or acquiesced in actions of that party, all of which are matters casting doubt on his character or fitness to practice law and should have been included in a full, truthful and accurate answer to question 4(j) of the registration statement. Question 22 of the Bar Application is identical to question 4(j) of the registration statement, and respondents further allege on information and belief that petitioner's "No" answer to question 22 is not a full, truthful and accurate answer in that it fails to mention or explain his apparent connections with the communist party and the immoral acts thereof.

Respondents have no information or belief sufficient to enable them to admit the allegation that the other conditions and requirements of taking the bar examination were fully, truthfully and accurately fulfilled and for that reason deny the same.

3. Admit the allegations of Paragraph 3 of the petition that petitioner passed the October 1953 bar examination and thereby fulfilled the requirements of the Bar Examiners in this particular.

4. Admit the allegations of Paragraph 4 of the petition that petitioner personally appeared at hearings before the Southern Subcommittee of the Committee of Bar Examiners on the 25th day of September, 1953, the 9th day of December, 1953, and the 27th day of January, 1954; that petitioner's Exhibit "A" is a full, true and correct copy of the official reporter's transcript of these hearings; that on the 8th day of February, 1954, the Southern Subcommittee of the Committee of Bar Examiners informed petitioner that his application for certification for admission to the Bar in the State of California had been denied; and that petitioner thereafter informed the Committee of Bar Examiners that he desired to appeal to the full Committee of the Committee of Bar Examiners. Respondents deny the allegation in Paragraph 4 of the petition that petitioner was directed to appear before the Southern Subcommittee of the Committee of Bar Examiners. Respondents allege that on or about the 18th day of September, 1953, petitioner was advised by the Committee of Bar Examiners that his application to take the October, 1953, bar examination would be considered by the Southern Subcommittee on the 25th day of September, 1953, and that petitioner was invited to appear. Respondents further allege that petitioner voluntarily appeared at the September 25, 1953, hearing, that petitioner was informed of evidence which had come to the attention of the Subcommittee and which raised doubts whether petitioner was qualified for admission to the State Bar of California, that petitioner was questioned under oath concerning such evidence and as to other matters relevant to his qualifications as a member of the State Bar of California, that additional hearings were held by the Subcommittee on the 9th day of December, 1953, and the 27th day of January, 1954, that petitioner attended these hearings, represented by counsel, and was given a full and complete opportunity to present affirmative evidence of his fit-

ness to practice law, and to question, explain or otherwise comment on the evidence against him (including the right to cross-examine the witness who had testified against him). Petitioner, through counsel, has affirmed that he was given a full, complete and fair hearing by the Southern Subcommittee of the Committee of Bar Examiners.

5. Admit the allegations of Paragraph 5 of the petition relative to the hearing before the full Committee of Bar Examiners, and allege that said hearing was full, complete and fair in all its aspects.

Petitioner has not included in his Record on Appeal the Exhibits presented in the hearings before the Committee and the Subcommittee. Since these Exhibits formed an integral part of the hearings and were given due consideration by the Committee in arriving at its decision, they are necessary to complete consideration of this appeal. Accordingly, respondents have transmitted the originals of all exhibits introduced at the Committee and Subcommittee Hearings as listed below:

COMMITTEE EXHIBITS

1. Photostats of California Eagle columns written by Raphael Konigsberg.

2. Konigsberg's testimony before the Tenney Committee.

3. Konigsberg's written statement to the Tenney Committee.

4. Konigsberg's Registration as a law student.

5. Konigsberg's Bar Application.

6. Photostats of pages from the California Eagle on which Konigsberg's columns appear. (All of Konigsberg's columns included here are also set forth in Exhibit 1, but Exhibit 6 places them in the context in which they appeared.)

KONIGSBERG'S EXHIBITS

A. War Department Technical Manual (TM 28-210).

B. War Department Mobilization Regulation ("Morale").

C. Army Orientation Fact Sheet.

D. Article by Raphael Konigsberg published in the National Jewish Monthly in 1944, entitled "Why I Am in This Fight."

E. File of letters attesting to Konigsberg's good moral character.

F. Legal memorandum in support of Konigsberg's Application.

G. Newspaper clippings of the "Law in Action" column discussing witnesses' privileges.

6. Admit the allegations of Paragraph 6 of the petition relative to the denial by the full Committee of Bar Examiners of petitioner's application and that the letter attached as Exhibit "D" is a true copy of the Committee's letter informing the petitioner of this denial.

7. Admit the allegations of Paragraph 7 of the petition.

8. Deny generally and specifically each and all of the allegations of Paragraph 8 of the petition.

For a Further, Separate And Affirmative Answer To Said Petition, Respondents Allege:

1. Respondent, The State Bar of California, is and was at all times mentioned herein a public corporation organized and existing under and by virtue of the State Bar Act (Stats. 1939, Ch. 34, p. 347, as amended; Ch. 4, comprising Secs. 6000 to 6154, incl., Div. III of the Bus. and Prof. Code);

2. Respondent, Committee of Bar Examiners of The State Bar of California, is and was at all times mentioned

herein the Committee established by the Board of Governors of respondent State Bar, having the power:

(a) to examine all applicants for admission to practice law;

(b) to administer the requirements for admission to practice;

(c) to certify to the Supreme Court for admission those applicants who fulfill the requirements provided in said chapter.

At all times mentioned herein the statutory requirements for admission to practice included (Cal. Bus. and Prof. Code, Secs. 6060(c) and 6064.1):

"§ 6060. *Qualifications for applicants.* To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

(c) Be of good moral character.

6064.1. *One advocating the overthrow of government not to be admitted.* No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

Pursuant to the provisions of the State Bar Act, Chapter 4, Division III, of the Business and Professions Code, said Committee of Bar Examiners, prior to the matters referred to in said petition and in this answer, had adopted, and the Board of Governors of The State Bar of California had approved certain rules regulating admission to practice law in California, which rules were in full force and effect at the time of the occurrences referred to in said petition and in this answer. Section 101 of Rule X of said

Rules interprets and provides for the application of California Business and Professions Code, Section 6060(c):

> "Section 101. Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsy rule, nor any other technical rule of evidence, need be observed; but an applicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based, and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."

3. On or about the 4th day of December, 1950, petitioner filed with respondents a sworn registration as a law student, and on or about June 30, 1953 filed with respondents his sworn application for examination to practice law. Each was on the form prescribed by respondents. In each case the applicant replied in the negative to the question:

> "Is there any incident of a derogatory nature in your life not called for by the foregoing questions that may have some bearing on your character and fitness to practice law?"

Information received by the Committee of Bar Examiners led the Committee to question the truth and propriety of petitioner's answer and to suspect that petitioner might not qualify under California Business and Professions Code, Sections 6060(c) and 6064.1. Accordingly, petitioner was invited to appear at a hearing before the Southern Sub-

committee of the Committee of Bar Examiners on the 25th day of September, 1953, at which time he was informed of evidence raising doubts as to his fitness to practice law, and was questioned concerning such evidence and other matters relevant to his qualifications to become a member of the State Bar of California.

No determination regarding petitioner's moral character and fitness was made at the September 25, 1953 hearing, and petitioner was allowed to take the October, 1953 bar examination on the express understanding and condition that, regardless of the results of his bar examination, no steps would be taken to admit him to the Bar until his moral fitness was established.

4. Petitioner passed the October, 1953 bar examination.

5. Additional hearings to determine petitioner's compliance with the requirements for admission to the State Bar of California were held before the Southern Subcommittee of the Committee of Bar Examiners on the 9th day of December, 1953 and the 27th day of January, 1954. Petitioner was present, with counsel, at said hearings and was given a full and fair opportunity to answer, explain, or comment on the detrimental evidence, cross-examine the witness against him, and affirmatively present any evidence or statements showing his moral fitness. Petitioner, through his attorney, has stated that said hearings were absolutely fair and impartial. A full, true and correct copy of the official reporter's transcript is attached to the applicant's petition as Exhibit "A."

6. On or before the 8th day of February, 1954 the Southern Subcommittee of the Committee of Bar Examiners considered all of the evidence which had been presented, and determined that petitioner had failed to show his good moral character so that his application must be denied. On or about the 8th day of February, 1954 said Subcommittee informed the petitioner in writing of the denial of his appli-

cation and the reasons therefor. Petitioner thereup informed the Committee of Bar Examiners that he desired to appeal to the full Committee of the Committee of Bar Examiners.

7. On the 13th day of March, 1954, a hearing was held before the full Committee of Bar Examiners in the City of Los Angeles, and evidence, both oral and documentary, was taken. Petitioner has never questioned the completeness, fairness or impartiality of said hearing. A full, true and correct copy of the official reporter's transcript of said hearing is attached to petition as Exhibit "B."

On or prior to the 17th day of May, 1954 respondents considered all of the evidence which had been introduced, and determined that petitioner had not sustained the burden of proof that he was possessor of the good moral character required by California Business and Professions Code, Section 6060(c) and that he had not complied with Section 6064.1 of said Code, so that his application must be denied. Petitioner was notified of this decision and the reasons therefor by letter dated May 17, 1954.

8. Petitioner has not complied with the requirements of California Business and Professions Code, Sections 6060(c) and 6064.1 and so is not entitled to be and should not be admitted to practice law in the State of California.

Wherefore, respondents pray that it be adjudged that the application of petitioner was properly denied by respondents and that petitioner is not entitled to be admitted to practice law in the State of California.

Ralph E. Lewis, Robert D. Burch, Frank B. Belcher,
by Frank B. Belcher, Attorneys for Respondents.

Duly sworn to by Alma Stayton. Jurat omitted in printing.

Proof of service (omitted in printing).

Office - Supreme Court, U. S.
FILED
JUL 18 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

No. ~~244~~ 5

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

EDWARD MOSK,
6305 Yucco Street,
Hollywood 28, California,
Attorney for Petitioner.

SAMUEL ROSENWEIN,
Of Counsel.

SUBJECT INDEX

PAGE

I.

Jurisdiction 1

II.

Statute involved 3

III.

Questions presented in this petition for a writ of certiorari..... 4

IV.

Statement of material facts..... 5

V.

Jurisdictional questions properly raised..... 14

VI.

Reasons why certiorari should be granted..... 15

Exhibit A. Letter dated February 8, 1954, from the State Bar to Raphael Konigsberg.....App. p. 1

TABLE OF AUTHORITIES CITED

Cases	Page
Board of Education v. Barnette, 319 U. S. 624	18
Levy, Application of, 348 U. S. 978	3, 17
Stevens, In re, 59 Cal. App. 251	18
Summers, In re, 325 U. S. 561	3, 15, 17
Thornhill v. Alabama, 310 U. S. 88	20
United Public Workers v. Mitchell, 330 U. S. 75	21
Wells, In re, 174 Cal. 467	18
Winters v. New York, 333 U. S. 507	17
Publication	
The California Eagle, May 5, 1950	16
Statutes	
California Business and Professions Code, Sec. 6060	3
California Business and Professions Code, Sec. 6064.1	3
California Business and Professions Code, Sec. 6068h	21
United States Code, Title 28, Sec. 1257	3
United States Constitution, First Amendment	4, 5, 8, 14
United States Constitution, Fifth Amendment	4, 5
United States Constitution, Fourteenth Amendment	4, 5, 15

IN THE

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RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

Petitioner Raphael Konigsberg respectfully prays for a Writ of Certiorari to the Supreme Court of the State of California to review the denial of the application of Raphael Konigsberg for admission to the State Bar of California.

I.

Jurisdiction.

On the 17th day of May, 1954, the Committee of Bar Examiners of the State Bar of California denied the application of Raphael Konigsberg for certification to practice law in the State of California. A copy of the letter

denying application is set forth herein and constitutes the only written "decision" in these proceedings:

"THE COMMITTEE OF BAR EXAMINERS
of the State Bar of California

May 17, 1954

To: Raphael Konigsberg, Applicant
2446 Echo Park Avenue
Los Angeles 26, California
and
Edward Mosk, Esq., Applicant's Attorney
6305 Yucca Street
Hollywood 28, California

Pursuant to your request of February 11, 1954, the record in the matter of your application for certification to the Supreme Court for admission to practice law which was before the Southern Subcommittee, has been reviewed by the entire Committee. In addition, a further hearing was held before the Committee on March 13, 1954.

It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of the good moral character required by Section 6060(c) of the State Bar Act, or (2) that you comply with the provisions of Section 6064.1 of said Act.

Your application is denied.

By order of the Committee of Bar Examiners.

/s/ GOSCOE O. FARLEY,
Goscoe O. Farley,
Secretary.

GOF:vz."

On the twenty-fourth day of July, 1954, your Petitioner filed a petition for review in the Supreme Court of the

State of California. On the 20th day of April, 1955, the Supreme Court denied his petition for review with Chief Justice Gibson and Justices Traynor and Carter voting to grant the petition. No written decision was filed by the Supreme Court.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257. The Court has heretofore granted certiorari in cases involving denial of admission to the bar.

See:

In re Summers, 325 U. S. 561 (1945);
Application of Levy, 348 U. S. 978 (1955).

II.
Statute Involved.

The basic act governing admission to the bar in the State of California is to be found in the Business and Professions Code of the State of California. The principal sections involved are Sections 6060 and 6064.1. These sections read as follows:

"Section 6060. QUALIFICATIONS FOR APPLICANTS:

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

(a) Be a citizen of the United States.

(b) Be of the age of at least 21 years.

(c) Be of good moral character.

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination . . . ."

"Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED:

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, Ch. 179, Sec. 1.)"

III.

Questions Presented in This Petition for a Writ of Certiorari.

1. Does the denial of petitioner's application for admission to the Bar of the State of California by the Committee of Bar Examiners, based solely upon the newspaper articles written by the petitioner and the political, social and economic opinions allegedly held by the petitioner, constitute a denial and limitation of the free exercise of speech and thereby constitute a violation of his constitutional rights under the First and Fourteenth Amendments to the Constitution of the United States?

2. Does the denial of admission to the bar, based upon a failure to establish good moral character because of his alleged political views, constitute a deprivation of the right to follow one's calling and deprive petitioner of life, liberty, property and the pursuit of happiness, contrary to the provisions of the Fifth and Fourteenth Amendments?

3. Does the interpretation of the State Bar Act of California placing upon the applicant the burden of proof to establish that he does not "advocate the overthrow of the Government by force and violence" in the face of the affirmative testimony of the applicant that he does not so believe constitute a violation of the due process under the

Fifth and Fourteenth Amendments of the Constitution of the United States?

4. Does the denial of admission to the bar solely on the grounds of political and social views expressed by petitioner constitute a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment?

5. Does the denial of admission to the bar, based solely on alleged membership in an organization not illegal at the time of the alleged membership violate petitioner's right to assemble under the First and Fourteenth Amendments?

6. Does the State Bar Act of California as applied in the instant case by the Committee of Bar Examiners in holding that the petitioner has failed to establish his good moral character, based upon the political, economic and social views allegedly held by petitioner, constitute a violation of petitioner's rights under the First and Fourteenth Amendments to the Constitution of the United States?

IV.

Statement of Material Facts.

In establishing his good moral character before the Committee of Bar Examiners petitioner testified that he graduated from Ohio State University in 1931. After obtaining his Bachelor's Degree, he spent one year teaching American history and English literature in the high schools of Cleveland. In 1934 he entered Ohio State University for graduate work. After obtaining a Master's Degree in 1935 he was appointed Supervisor by the Department of Health of the District of Columbia. He came to Los Angeles, California, in 1936 and served variously as Assistant Director of the Research Department

of the Council of Social Agencies, as Director of Community Suryeys for the Federation of Jewish Welfare Organizations, as a District Supervisor of the California State Relief Administration, and as Director of Social Services of the City of Hope Sanitarium in Duarte, California.

The petitioner obtained the rank of Captain in the United States Army and acted as Orientation Officer for the entire Seventh Army in Germany. He served in the United States Army from October 1942 until April 1946. After discharge from the Army he returned to the City of Hope Sanitarium. In 1950 he entered the University of Southern California Law School and pursued his legal studies there continuously until his graduation in 1953.

Prior to entering law school the petitioner was a candidate for the Los Angeles City Board of Education in the elections of 1947 and 1949 and for the California State Assembly in 1950.

On the fourth day of December, 1950, the petitioner filed with the Committee of Bar Examiners of the State Bar of California his application to register as a student of law. His petition was filed in the form prescribed by the Committee of Bar Examiners and at all times he complied with all requirements of the Committee of Bar Examiners relative to the study of law in the State of California.

Just sixteen days prior to the bar examination conducted by the Committee of Bar Examiners petitioner was advised by the Southern Subcommittee of the Committee of Bar Examiners that he must personally appear before the Committee, although he was not at this time informed the purpose of this hearing. A hearing was held on the

twenty-fifth day of September at which time the petitioner was interrogated under oath by the Committee. Thereafter, and at the request of petitioner's counsel, petitioner was allowed to take the bar examination subject to further hearings to determine his fitness for admission to the bar on the basis of good moral character.

Further hearings were held before the Southern Subcommittee of the Committee of Bar Examiners on December 9, 1953 and on January 27, 1954.* On the eighth day of February, 1954, your petitioner was informed by the Southern Subcommittee of the Committee of Bar Examiners that his application for certification for admission to the bar had been denied. [A true and correct copy of this letter of denial is attached hereto as Exhibit A.]

Thereafter, your petitioner appealed to the full committee of the Committee of Bar Examiners and requested a review of the proceedings of the Southern Subcommittee. Such a hearing was held on the thirteenth day of March, 1954, and on the seventeenth day of May, 1954, petitioner received a notice that his petition for admission to the bar had been denied. (See Sec. I herein for full text of this letter.)

At the hearings the petitioner testified to his personal background and work record as summarized herein. Thereafter, the Committee members interrogated him regarding certain articles which he had written for the weekly Los Angeles newspaper, THE CALIFORNIA EAGLE. A few selected articles from the series written by the petitioner for this newspaper were introduced by the Commit-

*See the Record on Appeal for the full transcript of the hearings before the Southern Subcommittee and the full Committee of Bar Examiners.

tee. Thereafter, the balance of the articles written by him were introduced as exhibits by the petitioner himself in order to present the complete picture. [R. pp. 93-97.]

The petitioner was then asked regarding appearances before two State investigating committees, reference to both of which had been made by the petitioner in his application for permission to take the bar examination. In the course of interrogation regarding these matters the petitioner was asked by one of the members of the subcommittee:

> "I take it, Mr. Konigsberg, that the totalitarian form of government is repugnant to you."

To which the petitioner answered:

> "Very definitely." [R. p. 26.]

Thereafter, the petitioner was asked whether he was a member of the Communist Party. He declined to answer this question on the ground that it was an infringement of his rights under the First Amendment. He specifically and repeatedly stated, however, that he does not now nor has he ever advocated the overthrow of the government by force or violence. [See R. p. 96.]

The petitioner was asked [R. p. 59] whether he was a Communist, to which he answered, "I will say no, definitely no. . . . I believe strongly in the fundamental concepts of our democratic system." The committee then presented a witness, Alice King Bennett who testified that she knew the petitioner as a member of a "small unit in the Communist Party" in 1941. When asked whether she identified Mr. Konigsberg as the person whom she had known and in response to the question "Are you certain . . . of the identification," she responded that "There

is no one else here who is the least bit familiar to me in appearance except this gentleman" (referring to Mr. Konigsberg). [R. p. 64.]

Mr. Konigsberg denied that he knew Mrs. Bennett. [R. p. 57.] Then under cross-examination at a subsequent hearing, Mrs. Bennett conceded that she had been a member of a group composed exclusively of social workers and containing all social workers in the community but that Mr. Konigsberg (although a social worker at that time) was not a member of that group. [R. p. 77.] When asked: "Was anything said by any person present at any of these meetings advocating the overthrow of the government by force and violence?" [R. p. 67] Mrs. Bennett replied, "I couldn't recollect any specific statement now by anybody, including myself" and "I don't recollect anything he (Konigsberg) said at all or anybody else said." [R. p. 85.] And finally, in response to the question "Isn't it true the only reason you identified him was because he was the only person present in the room you had ever seen before?" Mrs. Bennett responded "That is right." [R. p. 87.]

At the next session of the Subcommittee and at the suggestion of the Subcommittee, the petitioner submitted letters directed to the Committee of Bar Examiners from prominent persons in the community attesting to the good moral character of the petitioner. The Committee specifically suggested that rather than bring witnesses before it, the petitioner secure communications of this sort. [R. p. 111.] Petitioner submitted letters from three practicing attorneys, nine responsible business men in the Los Angeles community, three doctors, three ministers, three professors at universities in the City of Los Angeles, eight

persons connected with various fields of social work, and six other letters by other professional persons.

Typical of the comments in these letters are:

Mrs. Dorothy Wysor Smith, Executive Secretary, Travelers Aid Society of Los Angeles, writing on March 22, 1940, at the approximate date in which the witness appearing before the Committee, Mrs. Bennett, would appear to allege the petitioner to have been a member of the Communist Party:

> "During all of the years that I have known Raphael, I have found him to be absolutely honest in the broadest sense of the word and to have a type of professional integrity which is unfortunately rare even in social workers—that type which will actually lead a person to sacrifice his position and be in danger of going hungry, rather than stain his professional honor and violate his code of ethics. . . ."

Similarly, on March 15, 1940, Gardner Bullis, then President of the Los Angeles Council of Social Agencies, wrote with regard to Konigsberg that:

> "I have come to know of you and your work and your purpose solely through my contact and our mutual service in committee work in the Council of Social Agencies. Frequently, you and I may have differed on items or practices, or even philosophy. But I have never found any occasion but to admire you and the high purposes in the intelligent grasp and efficient execution of any task set before you. . . . They could not find anyone better qualified and I would unhesitatingly 100% recommend you for any purpose which required ability and honesty and familiarity with the problems of the work you have been accomplishing. This letter is written with deep conviction and with absolutely no purpose ex-

cept an honest consideration of the highest type of public service."

And writing about his knowledge of Konigsberg during the same period of time, the Rt. Reverend Monsignor Thomas J. O'Dwyer, on December 14, 1953, wrote to the Committee of Bar Examiners:

> "I wish to advise that I was well acquainted with him between the years 1936 and 1940. During that period he was employed as a member of the staff of the Council of Social Agencies in Los Angeles. He enjoyed an excellent reputation among all who were acquainted with him during all these years. . . . I do not hesitate to recommend him to you. I am satisfied that he will measure up to the high requirements established for the members of the legal profession."

Harry I. Friedman, Assistant District Supervisor of the State Bureau of Vocational Rehabilitation, wrote to the Committee:

> "During my frequent contacts with Mr. Konigsberg, I found him to be responsible for his statements to the patients he served and to the agencies and individuals he dealt with in their behalf. He was always sincere in his efforts to better their condition and in developing programs for them, showing imagination and resourcefulness. At no time during my relationship with Mr. Konigsberg have I seen evidence of anything but excellent moral character."

Mrs. Nonette Batavia, psychiatric social worker, wrote:

> "Outstanding in my exaluation of him were his personal and professional integrity, his devotion to his work, and his interest and zealousness in conscientiously carrying out his responsibility to the clients serviced by our agency. His moral character has

always been beyond reproach, his responsibility as a family man is well established, and his feeling is extended to his community."

Mr. Joseph Esquith, of the Jewish Centers Association, wrote:

"I should like to advise that I have known Raphael Konigsberg as a social worker from 1939 until the time he left the field to study for the bar. He is a person of high moral character, straightforward and honest in his approach to all human problems, conscientious, alert, well-informed, and articulate. He was always a leader in local social work and respected by its practitioners. It is my considered opinion that Mr. Konigsberg will be a very fine attorney and a credit to the profession. I wish him every success in his new field and I am sure he will make as fine a contribution as he did to the field of social work."

A letter by Chauncy A. Alexander, of the Southern California Mental Hygiene Association, reads, in part:

"I have known Mr. Konigsberg since 1940 in his various capacities in the social work field. . . . In all the professional contacts I have had with him, he has demonstrated a high standard of integrity and ability. I have had periodic occasion to participate with him in health and welfare agency committees, and he has demonstrated a devotion to democratic principles and participation."

Rabbi Jehudah M. Cohen, Pacific Regional Director of the B'nai B'rith Hillel Foundation, writes. in part:

"I unreservedly recommend Mr. Konigsberg as a person who is morally and ethically qualified to serve as a member of the bar."

Dr. Claude Hudson, dentist and member of the Board of Directors of the Broadway Federal Savings and Loan Association, writes:

> "In his public statements and private remarks to me (while both were candidates for the Los Angeles Board of Education), I had an opportunity to observe him. During this period of time I never heard him make a statement that would make me feel that he was not a man of strong character and a believer of democracy and the American idea."

Professor Victor Netterville, instructor in law at the University of Southern California, writes that his contacts with Mr. Konigsberg were in his scholastic relationship only, but he states:

> "It was my impression that Mr. Konigsberg is a man with the courage of his convictions but not one who holds these convictions blindly or with any but the most honest motives. He seems to hold the Constitution in high esteem and is a vigorous supporter of civil rights. But it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time to time of balancing the interest of the individual against the interests of society when the legislature takes action to protect society as a whole from threatened dangers. Throughout our discussions—in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussion. He indicated to me an open mindedness, seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen.
>
> "Based solely upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the Bar."

At the hearing of the full Committee, the petitioner was asked what organizations he belonged to and respectfully declined to respond on the ground that this invaded his rights under the First Amendment to the Constitution. The petitioner declined to answer other questions dealing with his opinions in the political, economic and social fields. Each declination was based upon the First Amendment and in no case did the petitioner decline to answer on the ground that the answers might be incriminatory.

The letter of the Committee of Bar Examiners to the petitioner dated May 17, 1954, denying his petition for admission to the bar of the State of California was based upon the following grounds:

> "It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of good moral character as required by Section 6060(c) of the State Bar Act, or (2) that you complied with the provisions of Section 6064.1 of said Act."

V.

Jurisdictional Questions Properly Raised.

At all stages of the proceedings before the Committee of Bar Examiners, the petitioner raised all constitutional questions which have become the basis for this petition for a writ of certiorari. In addition, in the petition to review the denial of the application before the Supreme Court of the State of California, pages 4 and 5, the petitioner asserted all of the constitutional grounds for jurisdiction as set forth elsewhere herein.

VI.

Reasons Why Certiorari Should Be Granted.

The Supreme Court has heretofore held that a denial of the right to practice law by a state court is a judicial act and that denial may constitute a deprivation of life, liberty or property substantial enough to invoke the due process clause of the Fourteenth Amendment. In the Illinois case *In re Summers,* 325 U. S. 561, 89 L. Ed. 1795, Summers asserted a present right to admission to the bar of Illinois and upon the denial of this right by judicial order, the United States Supreme Court granted certiorari. The court held that assertion of the right to practice and its denial by judicial order of the state court constituted a case within the meaning of Article III of the Federal Constitution although it ultimately held against the petitioner.

This present Konigsberg case frames the issue of whether state authorities shall be permitted to deprive petitioner seeking to exercise his right to life, liberty and pursuit of happiness in the practice of a profession of his own choosing, by establishing such arbitrary standards and political tests as to deny admission to persons differing in substance or degree from what may be popular or accepted by the committee or the general public at any particular time.

The statutes governing the admission to the bar in California present two primary qualifications for admission to the bar. First, the applicant (assuming passage of the necessary courses of study and the bar examina-

tion about which no issue exists in the present proceeding) must establish his good moral character. The rules for admission to the bar place the burden of proof for establishing this good moral character upon the applicant. The second provision is the negative provision that the applicant must not advocate the overthrow of the government of the United States by force or violence. Nowhere in either the statute or in the rules established by the Committee of Bar Examiners does there appear a statement as to where the burden of proof of this second qualification lies.

In the Konigsberg case the committee has seen fit (and the Supreme Court of the State of California has failed to review by a four to three vote) to interpret actions by the petitioner expressing his viewpoint in the political, social and economic arena as an indication of his lack of good moral character, or, at least, as raising doubts sufficient to indicate that he has failed to meet his burden of proof of good moral character. Insofar as the second qualification is concerned, no effort was made to establish affirmatively that the petitioner Konigsberg advocated the overthrow of the government by force or violence; on the contrary, the evidence is without contradiction both by word and deed that his belief in the fundamental principles of the American democratic system is without question. Thus in an article dated May 5, 1950, petitioner wrote in THE CALIFORNIA EAGLE:

> "It is vehemently asserted that advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our democratic processes. Those who preach it must be punished." [R. p. 95.]

We thus have a statute which may appear valid on its face in establishing the qualifications for membership to the bar of the State of California, but as applied by the Committee of Bar Examiners places such political tests on the applicant as to run afoul of the constitutional restrictions of the Fourteenth Amendment. See *Winters v. New York*, 333 U. S. 507, 509, where the court said:

> ". . . It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. . . ."

The Supreme Court has never passed upon the right of states to place political restrictions on the right to practice law. The case previously cited, *In re Summers*, dealt with an applicant who refused to comply with a constitutional requirement in Illinois that all persons bear arms in support of the state. There was no other political test involved in this situation other than the failure to support the Illinois Constitutional provisions. On the other hand, in the recent case of *Application of Levy*, 348 U. S. 978, the court saw fit to reverse a District Court decision denying admission to the Federal Bar in Texas based upon association with persons of suspect political leanings.

All of the cases in California heretofore interpreting the meaning of the good moral character requirement have shown that the standard of morality required here is one against which the personal actions of the particular applicant may be tested. Thus, conviction of a felony, commission of a crime, or falsification of bar application can be examined objectively and if the specific acts com-

mitted by the applicant are of a nature which go to the qualifications of an attorney, admission to the bar may be denied. (See *In re Wells*, 174 Cal. 467; *In re Stevens*, 59 Cal. App. 251.) But in the political realm and in the realm of social and economic doctrines, no such objective standard can be established or asserted other than the particular viewpoint of the group comprising the Board of Bar Examiners in the state at the time the applicant appears before them. The legislature of California has set up no political tests and if such political tests were established, it is submitted that this court would strike such tests down. By indirection, therefore, the Committee of Bar Examiners in this case establishes and writes into the laws of the state political tests for membership in the bar. It does this by the simple expedient of asking political questions and when denied answers which it has no right to have in the first place, it denies admission to the bar on the ground that good moral character has not been affirmatively established.

Such a procedure is a dangerous threat to the independence of the bar. The concepts so enshrined in our society, that every person shall have the right to select counsel of his own choosing, and that every person may select the occupation or the profession of his own choosing, are equally attacked by this doctrine. No group, no matter how high or honorable, can be given the power and authority to proscribe what is orthodox in politics or matters of opinion. (*Board of Education v. Barnette*, 319 U. S. 624.) To allow the Board of Bar Examiners to exercise this right is to give it an arbitrary power which could ultimately lead to a bar composed of persons who will conform and agree with the political, economic and social tests established by the Committee of Bar Ex-

aminers. No applicant for the bar, no student who seeks to commence his study of the law, could dare have a political, economic or social opinion for fear that at the time that he appears before the Board of Bar Examiners, his views may then be considered improper, radical or unorthodox and he be denied admission to the bar after years of formal study.

The arbitrary nature of the determination by the Committee of Bar Examiners in California is clearly pointed up by an examination of the record below. The applicant here came before the Committee with an affirmative showing of good moral character far beyond that which could be shown by the ordinary applicant for admission to the bar. A mature man of 42, the applicant presented more than thirty letters by outstanding citizens in the community who spoke in glowing terms of the loyalty, fitness and ability of the petitioner to be a member of the bar and apprised the Committee of their certainty that he would be a valuable asset to the Bar of California. The Committee saw fit to assert that with this affirmative showing, the petitioner had failed to meet his burden of proof on either (1) good moral character, or (2) that he did not advocate the overthrow of the government by force and violence.

When the Committee of Bar Examiners raises as the second reason for denial of petitioner's application that he has failed to meet his burden of proof to establish that he does not advocate the overthrow of the government by force and violence, the Committee places an arbitrary and impossible burden upon the petitioner. How can a person establish a disbelief in a concept such as advocacy of the overthrow of the government by force and violence. The petitioner established by his own testimony

that he did not believe in such a doctrine. He established by his writing that he had always opposed such a doctrine. He established by his career in the political arena and by his activities in the United States Army that his life had been dedicated to opposition of such a doctrine. In the face of this positive testimony the Committee has arbitrarily and without any evidence presented to the contrary stated that he has failed to meet his burden of proof in this respect. It is submitted that the burden of proof to establish what would otherwise be a criminal act must not fall upon the petitioner but must fall on the Committee itself. The position of the Committee places in the hands of the Committee an arbitrary power of interpretation which it has exercised arbitrarily and has thereby deprived petitioner of his Constitutional rights.

One wonders how in its essential elements this case differs from *Thornhill v. Alabama*, 310 U. S. 88, 97, where the court in discussing a somewhat different type of license but nevertheless an area in which a state authority was seeking to control who might carry on a particular livelihood within the state by use of its licensing powers, said, in part:

> "The power of the licensor against which John Milton directed his assault by his 'appeal for the liberty of unlicensed printing' is pernicious not merely by reason of the censure of the particular comments, but by reason of the threat to censure comments on matters of public opinion. It is not merely the sporadic abuse of power by the censor, but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See *Neer v.*

Minnesota, 283 U. S. 697, 713. One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. *Lovell v. Griffin,* 303 U. S. 444; *Haque v. CIO,* 307 U. S. 496."

Petitioner is aware of decisions which have accepted loyalty standards in matters of public employment. It should be noted, however, that in this case the applicant was not seeking a job with the State Bar, he seeks to become a member of a free, untrammeled and independent bar. The restrictions which may be placed and which should be allowed in this situation are far different from those in the cases involving public employees. The lawyer has a responsibility to the state, his community and to the court "never to neglect for any consideration personal to himself, the cause of the defenseless or the oppressed." (Business and Professions Code, Sec. 6068h.) Certainly the political limitations which have been place on federal employees under the so-called Hatch Act and as defined in *United Public Workers v. Mitchell,* 330 U. S. 75, could never be sustained or allowed in the case of lawyers.

Lawyers have played a major part in the development of this country because they have maintained independence of thought and action. Lawyers can be proud of their colleagues who have risen to the defense of the unpopular, the underprivileged and the friendless. But will the legal profession continue to merit this pride? Will the legal profession continue to play its part in the future of this country if it succumbs to the hysteria of the times and

sets up standards and criteria for membership at the bar which admits only the orthodox and the conformist?

It is submitted that Raphael Konigsberg by his record of education, his lifetime of accomplishment, his established integrity and morality would conform to the highest traditions of the bar.

For these reasons the Writ should be granted.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

EXHIBIT A.

THE COMMITTEE OF BAR EXAMINERS
Of The State Bar of California

February 8, 1954

REGISTERED MAIL

To: Raphael Konigsberg
2446 Echo Park Avenue
Los Angeles 26, California

and

Edward Mosk, Esq., his Attorney
6305 Yucca Street, Room 254
Hollywood 28, California.

The Southern Subcommittee of the Committee of Bar Examiners has reviewed the record in the matter of your application for certification to the Supreme Court of this State for admission to practice law. As a general applicant you are required, among other things, to meet the requirements of Section 6060(c) of the Business and Professions Code and the Rules Regulating Admission to Practice law in California, before this Committee can take the affirmative step possessed of good moral character.

You were orally examined on September 25 and December 9, 1953, and you and your counsel appeared before the Southern Subcommittee on January 27, 1954. Newspaper articles, letters, and other documentary evidence were introduced.

It is the opinion of the Southern Subcommittee that the record in this proceeding does not warrant that it certify to the Supreme Court that you are possessed of the good moral character required.

Your application is denied.

You are entitled, in accordance with Section 5 of the Rules Regulating Admission to Practice Law in California, copy of which is enclosed, to have your application reviewed and determined by the Committee, upon filing, within ten (10) days after notification of the Subcommittee's action, a written application therefor.

For the Commission of Bar Examiners:

/s/ Alma Stayton
Alma Stayton,
Assistant Secretary.

Enclosure.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. [illegible]

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

Petitioner's Response to Respondent's Brief in Opposition to Petition for Writ of Certiorari.

EDWARD MOSK,
6305 Yucca Street,
Hollywood 28, California,
Attorney for Petitioner.

SAMUEL ROSENWEIN,
Of Counsel.

SUBJECT INDEX

PAGE

I.

Introduction 1

II.

Response to respondent's brief in opposition to petition 2

A. Petitioner's record shows many specific instances where the federal questions in this case are presented 2

B. The court has recently granted certiorari in a California case bearing on closely related issues 5

C. Respondents' own position is predicated on the very federal question the existence of which they deny 6

1. Respondents' entire inquiry into petitioner's qualifications for the practice of law in California—and all their reasons for denying him certification to the bar—are in the realm of political opinion and association 6

(a) Newspaper articles and public statements of petitioner 6

(b) Alleged membership in an unpopular political party or association 9

2. Cases relating to political tests for public employees are not applicable to qualifications for admission to the bar 10

3. Respondents assert unreasonable requirements 14

4. This case is distinguishable from the Anastapolo case 16

D. The federal question was properly presented in the state court 17

E. The federal issue was necessary to the decision of the Supreme Court of California 20

III.

Conclusion 23

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Adams v. Russell, 229 U. S. 353	22
Adler v. Bd. of Education, 342 U. S. 485	10, 13
Anastapolo, George, In re, 348 U. S. 946, 121 N. E. 2d 826	16, 17
Bailey v. Richardson, 182 F. 2d 46	12
Black v. Cutter Laboratories, 43 Cal. 2d 788	5
Braniff Airways v. Nebraska State Board, 347 U. S. 590	19
Cummings v. Missouri, 71 U. S. 277, 18 L. Ed. 356	11, 12
Garland, Ex parte, 71 U. S. 333, 18 L. Ed. 366	11, 12
Garner v. Bd. of Public Works of Los Angeles, 341 U. S. 716	10, 13
Johnson v. Risk, 137 U. S. 300	22
Klinger v. Missouri, 13 Wall. 257	22
Lawrence v. State Tax Commission, 286 U. S. 276	22
Lawson v. United States, 339 U. S. 934	7
New York ex rel. Bryant v. Zimmerman, 278 U. S. 63	18
Phyle v. Duffy, 334 U. S. 431	22
Quinn v. United States, 349 U. S. 155	19
Summers, In re, 325 U. S. 561, 89 L. Ed. 1795	12, 13
United States v. Dennis, 341 U. S. 494	10
Williams v. Kaiser, 323 U. S. 471	22
Woods v. Nierstheimier, 328 U. S. 211	22
Wyman v. Updegraff, 334 U. S. 183	10, 13, 14

MISCELLANEOUS

California Eagle, May 25, 1950	15
Frank, Courts on Trial, p. 62 (Princeton U. Press, Princeton, N. J., 1949)	8
Rodell, Nine Men (Random House, N. Y., 1955)	8

STATUTES

United States Constitution, First Amendment	9, 10, 19
United States Constitution, Fifth Amendment	19
United States Constitution, Fourteenth Amendment	12, 13, 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 244.

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

Petitioner's Response to Respondent's Brief in Opposition to Petition for Writ of Certiorari.

I.

Introduction.

Respondents deny jurisdiction of this Court on the grounds that:

> "1. The Federal question was not duly presented to the Supreme Court of the State of California.
>
> "2. The record fails to show that the Federal issue was necessary to the decision of the Supreme Court of California." (Resp. Br. p. 2.)

Petitioner's shall establish in this response that the above claims of respondents are without foundation in reality and without authority in law.

II.

Response to Respondant's Brief in Opposition to Petition.

A. Petitioner's Record Shows Many Specific Instances Where the Federal Questions in This Case Are Presented.

1. In hearings before the Committee of Bar Examiners.

(a) Record on Appeal, Exhibit A—Pages 41, 42, 44, 45, 48, 49, 51 and 53. For example:

At page 42, in answer to the question "Mr. Konigsberg, are you a Communist?", (petitioner said) ". . . the right of political opinion is protected under the First Amendment and is binding on the states."

At page 49, petitioner affirmed: "Under those circumstances, the constitutional guarantee of free speech means nothing if it doesn't mean you can keep your views to yourself. . . ."

At page 51, petitioner told the Committee of Bar Examiners that they were among the leaders of the bar, and as such they "should be among the first to combat this notion that it is wrong to use a constitutional privilege . . . ."

(b) *Second hearing:* Record on Appeal, Exhibit A—Pages 112, 113, 119, 122, 125, 132. For example:

At pages 112-113, when the chairman of the Committee of Bar Examiners said "Mr. Konigsberg takes the position that he does not want to answer the question as to present membership in the party . . .," petitioner replied, ". . . I didn't say I didn't want

to. I answered it in the way I felt I could answer it; basing my answer on the guarantee of the First Amendment . . . and I feel that the position I am taking . . . places me with so many other citizens . . . who feel they must take this position as their part in defending our liberties against attack."

(c) *Fourth hearing:* Record on Appeal, Exhibit B—Pages 7, 12, 13, 14, 22, 23, 25, 26, 29, 33, 36, 37, 38, 40, 45, 51, 52. For example:

At page 7, petitioner told the Committee of Bar Examiners that their questioning him about his political views—when all other applicants for admission are not so questioned—was "a violation . . . of the equal protection clause of the 14th Amendment of the Constitution of the United States and Article I, Sections 11 and 12 of the California Constitution."

At pages 13-14, petitioner told the Committee that its act of refusing to certify him for admission to the bar without informing him of any findings of fact was "such an unreasonable act as to constitute both abuse of discretion and infringement of my rights under Article I, Section 1, of the California Constitution and under the Fourteenth Amendment of the Constitution of the United States."

At page 25, when the chairman was questioning him about the newspaper articles he had written, the petitioner, in declining to discuss them said: ". . . the material I wrote then I wrote as a working newspaperman . . . There is involved a question of freedom of the press . . ."

At page 45, petitioner declared : ". . . you are not empowered to inquire into a man's beliefs . . . It has no bearing on his qualifications to practice law."

2. In Petition to Review Denial of Application—To the Supreme Court of the State of California.

At pages 5-6, petitioner set forth among the facts constituting the basis for his petition:

"9. That the denial of the application . . . violates the rights of petitioner under the First Amendment to the Constitution of the United States.

"10. That the denial . . . violates the Fifth Amendment to the Constitution of the United States in that it deprives petitioner of liberty or property without due process of law.

"11. That said denial violates the 14th Amendment to the Constitution of the United States in that it is an attempt by the State of California to deprive petitioner of liberty or property without due process of law and denies petitioner the equal protection of the laws."

3. *Petitioner's Brief* to the Supreme Court of the State of California: *Pages 12 and 41.*

At page 12: "The Committee asked the applicant if he was a member of the Communist Party, and the applicant declined to answer the question primarily on the ground that it was invasion of his constitutional rights encompassed in the First Amendment to the Constitution."

At page 41: "At no time in the hearings was any formal statement of adverse information presented

to petitioner. It is submitted that the Committee erred in this, and by reason of this failure, the petitioner was denied due process in these proceedings."

4. *Petitioner's Reply Brief Before the Supreme Court of the State of California: Pages 3 and 12.*

At page 3: ". . . . in the Konigsberg case, the applicant deliberately, affirmatively and vigorously asserted that it was his solemn duty as a citizen to defend the Constitution by refusing to answer questions which invaded his fundamental Constitutional rights."

At page 12: "The petitioner asserted that these questions (concerning his political opinions) invaded his rights under the First Amendment to the Constitution and that under no circumstances was the information sought to be elicited by the Committee relevant to the issues at bar."

It is clear, therefore, that not only were the Constitutional issues raised—but that they were raised at the earliest possible time and at all stages of the proceedings before reaching this Court.

B. The Court Has Recently Granted Certiorari in a California Case Bearing on Closely Related Issues.

It is important to call this Court's attention to the further fact that the California Supreme Court, which divided 4-3 in refusing (without a written opinion) to review petitioner's case, is the very same court which divided 4-3 in the case of *Black v. Cutter Laboratories* (1955), 43 Cal. 2d 788, wherein this Court has recently granted a writ of certiorari. The key issue in the *Black* case is: May a citizen be denied the right to earn a living because of his political opinions and/or associations?

It is submitted that the basic issue in the instant case is parallel:—may a citizen be denied the right to follow the profession of law because the bar examiners do not approve of his political opinions or associations? The equally grave federal questions raised in this case should also be heard and determined by this Court.

C. Respondents' Own Position Is Predicated on the Very Federal Question the Existence of Which They Deny.

1. RESPONDENTS' ENTIRE INQUIRY INTO PETITIONER'S QUALIFICATIONS FOR THE PRACTICE OF LAW IN CALIFORNIA—AND ALL THEIR REASONS FOR DENYING HIM CERTIFICATION TO THE BAR—ARE IN THE REALM OF POLITICAL OPINION AND ASSOCIATION.

(a) *Newspaper Articles and Public Statements of Petitioner.*

Even a cursory examination of petitioner's Record on Appeal—containing the verbatim report of the four hearings before the Committee of Bar Examiners, which comprise all the "evidence" upon which respondents based their denial of certification—demonstrates the full truth of the above conclusion. For, aside from the few preliminary questions relating to petitioner's education and employment, respondents asked not a question outside the realm of political opinion or association.

Added proof is offered by this fact: while respondents at no stage in the proceedings presented petitioner with a definite statement of "charges" against him or of the reasons for their denying him certification to the bar, we may reasonably infer from their arguments that their sole grounds for denying him certification were: (See Resp. Br. pp. 5-9) (a) The political, social and economic opin-

ions expressed by petitioner in newspaper articles; (b) Alleged past membership in a proscribed organization; (c) Failure to adequately deny advocacy of force and violence as a means of overthrowing the government of California and of the United States; (d) Opposition to the California Committee on Un-American Activities. Yet respondent insists that the beliefs and opinions of petitioner were not the basis of its decision to deny him admission to the bar.

Further corroboration of the complete political nature of respondents' inquiry into petitioner's moral character is evidenced by their insistance that he elaborate on his present opinions of the political, social and economic subjects discussed in the newspaper articles written some years earlier. (Resp. Br. pp. 7, 9.)

From an entire group of some 52 articles covering varied subjects, respondents selected for particular emphasis in their opposition brief the one which was critical of the Supreme Court's decision denying certiorari in *Lawson v. United States*, 339 U. S. 934. Respondents fail to mention that when he wrote this article, petitioner was a working newspaperman, and they fail also to mention that petitioner requested that the hearings before the State Bar be reopened so as to permit him to clarify any misunderstanding this article may have created concerning his attitude toward the Supreme Court of the United States and its role in our democratic society. (Pet. Rep. Br. p. 14.) This request was denied.

To suggest that criticism of any department of government disqualifies the critic for membership in the State Bar flies in the face of all traditions upon which our democratic society is based. More vigorous disa-

greement with courts and decisions of our courts have been expressed by many persons both lawyers and non-lawyers without raising questions as to their loyalty or fitness as members of the Bar.*

At page 22 of their Brief, Respondents quote from one of petitioner's newspaper articles written in July, 1950:

> "To consider loyalty to America as identified with loyalty to Truman, Dulles and U. S. Steel is, to me, the ultimate in sacrilege. . . . Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and the Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people."

How such a philosophy of loyalty to our country renders a citizen unfit for admission to the Bar is unexplained by respondant; yet the State Bar cites this as proof of petitioner's unfitness.

Thus we have in substance** the evidence which respondents declare (at p. 5 of their Brief) was "most directly relevant to Committee's determination that petitioner had failed to establish that he was qualified for admission to the Bar * * *." If these words mean anything, they mean that because petitioner held the views referred to in

---

*For example: ". . . one's rights to life, liberty or property are subject to the effect of such variable factors as crooked lawyers, crooked witnesses . . . crooked judges . . . biased juries." Jerome Frank, *Courts on Trial* (p. 62), Princeton U. Press, Princeton; N. J., 1949. See also, Prof. Fred Rodell, *Nine Men*, Random House, N. Y., 1955. See also newspaper comment of many distinguished public officials and leading lawyers in the southern part of the United States relating to the so-called desegregation decisions.

**See also paragraph (b) below.

the preceding paragraphs, respondents denied him admission to the bar. Yet, astonishingly in the face of this respondents find it possible to say, at page 17 of their Brief:

> "Thus, . . . is the record devoid of any indication that petitioner's political, social and economic views were considered by the Committee * * *."

Petitioner contends that respondents, by themselves grounding their denial of his application for admission to the bar on his alleged political opinions and associations, have conceded the federal issue in this case which warrants the granting of the writ of certiorari by this Court.

(b) Alleged Membership in an Unpopular Political Party or Association.

As part of the "evidence most directly relevant to the Committee's determination," respondents (Resp. Br. p. 9) list the alleged identification of petitioner's presence at Communist Party meetings—and assert (Resp. Br. p. 16) that "it is well-established that the Communist Party, and a large portion of its members, advocate overthrow of the government by force and violence * * *."

Even, for purposes of this brief, assuming the truth of the allegations concerning petitioner's political associations, a fundamental constitutional fallacy is committed by respondents in their reasoning and in their action in this case. They argue, in effect, that since the right to practice law is a privilege (a question we shall discuss below), it can be denied to any person who, in the exercise of rights under the First Amendment, was or is associated with organizations condemned by Congressional

or state legislative committees. They apparently argue the State can require applicants for admission to the Bar to refrain from activities protected by the First Amendment. They ignore the fact that in *United States v. Dennis*, 341 U. S. 494 the Supreme Court made it clear that the activities of each individual must be carefully scrutinized to determine whether or not the activities involved were outside the protection of the First Amendment. It is thus apparent that individual activity concerning alleged subversive organizations is, at least *prima facie*, activity guaranteed and protected by the First Amendment and lacking overt unlawful acts, may be engaged in by anyone.

While respondents assert that "a large portion of its (the Communist Party's) members advocate, etc." (*supra*) —at no point in their Brief, and at no point in the entire proceedings, do respondents charge that petitioner has personally advocated any such acts, or that he had committed any such overt acts, nor do they offer any evidence that he had knowledge that such was the purpose of the Communist Party. (See *Wyman v. Updegraff*, 334 U. S. 183). As a matter of fact the evidence adduced at the hearing clearly indicated no improper actions were taken by petitioner or any member of the group to which he is alleged to have been a part. [Rep. Tr. pp. 85-86.]

2. Cases Relating to Political Tests for Public Employees Are Not Applicable to Qualifications for Admission to the Bar.

Respondents declare that under the principles established in the cases of *Garner v. Bd. of Public Works of Los Angeles*, 341 U. S. 716, 720 and *Adler v. Bd. of Education*, 342 U. S. 485, 493, "California could prop-

erly require every applicant for admission to the Bar to disclose his past or present membership in the Communist Party and summarily refuse to admit any applicant who refused to make this disclosure." (Resp. Br. p. 20.) In taking this position, respondents commit two major fallacies:

First, they equate the practice of law with public employment. This is false. A public employee is responsible to a governmental body, is paid a salary from tax funds, and must carry out the orders of his superiors in the governmental organization. A lawyer is an officer of the court, a member of a free and untrammelled bar composed of persons whose duty it is to defend the rights of all the citizens of a community regardless of their economic, social or political views—and often against the attacks of public officials.

Underlying the whole of respondents' argument, and the justification for both its procedure and its final conclusion, is the thesis that admission to the practice of law is but a naked privilege. From such an assumption flow the propositions that the granting and withholding of the privilege are subject to the plenary power of the state and that the applicant has no right or interest entitled to constitutional protection. It is petitioners' position that neither respondents' thesis nor the propositions which it engenders are consistent with authority or the principles of our society.

In *Ex parte Garland*, 71 U. S. 333; 18 L. Ed. 366, and *Cummings v. Missouri*, 71 U. S. 277; 18 L. Ed. 356, the court held that the right to practice law is encompassed within the "certain inalienable rights" to "life, liberty and the pursuit of happiness" which lie at the root of "our

political institutions." Subsumed under the pursuit of happiness is the concept that "all avocations, all honors, all positions are alike open to everyone." So substantial is this right that deprivation of it for past conduct is, and has historically been recognized as, punishment—and "can be in no otherwise defined." (*Cummings v. Missouri*, 71 U. S. at 321, 322, 18 L. Ed. at 362.) The right may therefore not be taken from an admitted attorney through disbarment or suspension or from a prospective one by establishing "qualifications" except in accordance with the limitations upon governmental power prescribed in the constitution. (*Ex parte Garland*, 71 U. S. at 378, 379, 18 L. Ed. 370.)

So interpreted, the *Cummings* and *Garland* cases have vitality today. They have been held to define, for lawyers as well as other vocations, the right to pursue a chosen calling as "part of the right to happiness and liberty basic to our system." And this right, by nature as well as in degree of constitutional protection, rises superior to public office just as the right to practice law is superior to the right to a particular retainer. (*Bailey v. Richardson*, (C. A., D. C.), 182 F. 2d 46, 60.)

A denial of the right to practice law is a judicial act and that denial may constitute a deprivation of "life, liberty or property" substantial enough to invoke the due process of law clause of the Fourteenth Amendment. (*Re Summers*, 325 U. S. 561, 89 L. Ed. 1795.) Summers asserted "a present right" to admission to the bar of Illinois. Upon denial of his right by judicial order he obtained review before the United States Supreme Court on a writ of certiorari asserting that the denial deprived him of liberty and property without due process. Surely had his right to admission been a mere naked privilege,

he could not have invoked, successfully for purposes of obtaining review, the due process clause of the Fourteenth Amendment.

Moreover, the Court in *Summers'* case held that the assertion of the right to practice and its denial by judicial order of the state court constitute a "case" within the meaning of Article III of the federal Constitution.

The second significant error committed by respondents is their ignoring of the important fact that the force of the decision in the *Garner* and *Adler* cases was considerably weakened by the later decision in *Wyman v. Updegraf*, 334 U. S. 183, 97 L. Ed. 216, 222. So that even granting, for the sake of discussion, that public employment and the practice of law are comparable, respondents' arguments cannot have the effect they intend.

For in the *Updegraf* case the court struck down as arbitrary and offending due process an exclusion from public office of persons for past organizational membership regardless of *scienter*. In asserting the operation of constitutional protection for public employees against an assertion of arbitrary power, the court in effect questioned the validity of respondents' action here. For the inquiry directed to petitioner was no less a loyalty oath than that involved in *Updegraf*. Petitioner declined to answer as did the public employees in that case. The latter were ordered discharged because of their refusal; petitioner is excluded for his. There is in this record at least the same lack of *scienter* as in *Updegraf*. Indeed this record is stronger in that petitioner affirmatively denied advocating violent overthrow of the government. He is as much subjected to "arbitrary or discriminatory" exclusion as were the educators in *Updegraf*.

In *Updegraf*, the Court affirmed that ". . . constitutional protection does extend to the public servant where exclusion is pursuant to a statute patently arbitrary and discriminatory." (344 U. S. 183, 192.) Certainly then the arbitrary and discriminatory exclusion of petitioner by action of a state bar committee is as constitutionally offensive.

3. RESPONDENTS ASSERT UNREASONABLE REQUIREMENTS.

Respondents assert that in view of "petitioner's refusal to amplify his unsupported declaration that he did not advocate overthrow of the government . . . the Committee could constitutionally determine that he had not established his qualification for admittance to the Bar . . ." (Resp. Br. pp. 22-23.)

Petitioner does not think it necessary, in reply, to prove to this Court the impossibility of "proving a negative" and the consequent unreasonableness—from both a logical and a constitutional basis—of conditioning admission to the bar on such "proof."

Despite this difficulty, petitioner insists that respondents' charge that he refused "to amplify" his declaration that he did not advocate overthrow of the government by force and violence is untrue—for petitioner did present substantial evidence, both direct and indirect, of the truth of his avowal of non-advocacy of force and violence. And in doing so, he successfully bore the burden of proof in this matter—though being required to bear such burden was a violation of his constitutional rights. [Record on Appeal, Ex. B, pp. 10-12; Pet. Br. pp. 34-39.]

First, petitioner desires to call this Court's attention to the repeated instances throughout the proceedings of his

disavowal of force and violence. [See, for example, Record on Appeal, Ex. A, pp. 41, 42, 96.]

Secondly, there are examples of affirmative statements—not one of which can be said to be self-serving since they were all published before petitioner was even a law student—in which petitioner opposed the doctrine of force and violence.

1. A newspaper article entitled "Force and Violence" written by petitioner, in which he states:

> "It is vehemently asserted that the advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our Democratic processes. Those who preach it should be punished." (California Eagle, May 25, 1950) [See R. p. 95].

2. The closing sentence in the statement before the Tenney Committee (quoted by respondents at page 9 of their Brief, as evidence of petitioner's moral unfitness), in which petitioner—after vigorously opposing that committee asserts: "I pledge my word to use every *democratic* means to defeat you." Certainly here is no indication of advocacy of force and violence.

3. Statement written by petitioner for U. S. Army Orientation Program, during service in World War II, in which he states:

> "I want the United States of America to be a mighty democratic nation . . . . I know that democracy can be lost . . . I have learned that if fascism comes here I myself will be to blame . . . if I have not done everything in my power to prevent it . . . I feel personally responsible for my country's fate. I want to help shape America's future." [Ex. A, pp. 98-99.]

Finally, as part of the indirect evidence in this case, that petitioner does not believe in advocacy of the overthrow of our government by force and violence, he submits the affirmative evidence offered in the letters from over 40 responsible citizens of his community who were intimately acquainted with him and his work over a period of 15 years or more. (See Pet. for Writ of Certiorari, pp. 10-13, for examples of these testaments.) Petitioner submits that the strong evidence of good moral character and good citizenship offered in these letters is simply inconsistent with the character of one who would be guilty of any criminal intents or acts, let alone advocacy of force and violence.

It should also be noted that respondents' assertion, that "their (the letters) persuasiveness was limited since none of them were directed to, or showed any knowledge of, the specific matters causing the Committee to have doubts concerning petitioner's qualifications . . . ." (Resp. Br. p. 10), can mean only that respondents wanted only declarations concerning petitioner's political opinions or associations. Another instance of their persistent concern solely for the forbidden realm of ideas—belieing again claims that the committee did not consider this realm in their deliberations.

4. This Case Is Distinguishable From the Anastapolo Case.

It is in order, at this point, to take note of respondents' conclusion that "petitioner has, at the most, done no more than re-present the issues raised in *In re George Anastapolo* (Ill. Sup. Ct. 1914), 348 U. S. 946, 121 N. E. 2d 826, and there determined by this Court not to present a substantial Federal question." (Resp. Br. p. 24.). Petitioner insists, and this analysis plus the total record makes abun-

dantly evident, that there are fundamental differences between the facts and the issues raised herein and in the *Anastapolo* case—particularly petitioner's strong affirmative proof of faith in democratic principles and opposition to use of force and violence in our democratic system. Furthermore as set forth elsewhere in this response new constitutional questions have been raised by both parties to this proceeding.

Respondents here concede that they "wholeheartedly agree with petitioner that one's political, social and economic beliefs are not, and should not, be a test for admission to the Bar." (Resp. Br. p. 15.) Later they affirm that they "would be among the first to denounce any state which refused to admit a qualified applicant to the Bar because his social, economic or political views deviated from those of the examining commitee." (Resp. Br. p. 16.) Yet our analysis here proves conclusively that respondents have committed the very acts they thus condemn. Petitioner asserts that in conceding the above position—the very position for which petitioner has been contending throughout these proceedings—respondents have conceded both the jurisdiction of this Court and we submit the ultimate decision in this case.

D. The Federal Question Was Properly Presented in the State Court.

Respondents insist that "the Federal question was not duly presented to the Supreme Court of the State of California." (Resp. Br. p. 2), and that petitioner's brief before that court "completely failed to raise or discuss any constitutional issue . . . ." (Resp. Br. p. 5.) Petitioner contends that his analysis of the facts and issues in this case, presented above, leads inevitably to the conclusion

that respondents err on both counts: he raised constitutional issues, and they were duly presented to the Supreme Court of the State of California.

Since the conclusion is inescapable that constitutional issues were implicit in every point raised by petitioner below, the burden of respondents' argument is only that petitioner did not raise or present the constitutional issues underlying his case in the specific language or form which they consider to be required? If so, then respondents err again—for the Supreme Court has established the rule that no mandatory language or form of presentation is essential.

Simply stated, the rule is that in framing the federal question for presentation to the state court, the litigant is not bound to follow any particular form of words or phrases. It is essential only that he bring the federal claim and the grounds therefore to the state court's attention with fair precision and ". . . if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." (*New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 67.)

Petitioner contends that an objective appraisal of his brief here and of his total record demonstrates that his case is "on all fours" with this rule.

In addition to stating that petitioner failed to assert a federal right respondents seem to infer that petitioner failed to call the state court's attention to the proper constitutional amendment appropriate to this case, and that he thereby waived his right. (Resp. Br. p. 1,)

The law is too well-established to require extended documentation that constitutional rights are not easily

lost (if at all) under such circumstances. Even reliance on the inappropriate constitutional clause is not fatal to the cause. See *Braniff Airways v. Nebraska State Board,* 347 U. S. 590: Here appellant relied on the "commerce clause" and did not specifically claim protection under the due process clause of the Fourteenth Amendment, and the Supreme Court held that the federal question was sufficiently presented.

With respect to this question, a recent decision of this Court is very much in point. In *Quinn v. United States,* 349 U. S. 155, the plaintiff in an appearance before the House Committee on Un-American Activities had refused to answer questions concerning his political associations, and in doing so relied on the First and Fifth Amendments. The government argued that *Quinn's* references to these constitutional amendments were inadequate to invoke them. This Court held that:

> "It is agreed by all that a claim of the privilege does not require any special combination of words. Plainly a witness need not have the skill of lawyer to invoke the protection of the Self-Incrimination Clause. If an objection to a question is made in any language that a committee may reasonably be expected to understand as an attempt to invoke the privilege, it must be respected both by the committee and by a court."

and that:

> ". . . the fact that a witness expresses his intention in vague terms is immaterial so long as the claim is sufficiently definite to apprise the committee of his intention. As everyone agrees, no ritualistic formula is necessary in order to invoke the privilege."

E. The Federal Issue Was Necessary to the Decision of the Supreme Court of California.

The second of respondents' grounds for denying the jurisdiction of this Court is that:

> "2. The record fails to show that the Federal issue was necessary to the decision of the Supreme Court of California." (Resp. Br. p. 2.)

and that

> ". . . there is every indication that the California Supreme Court's decision was based on non-Federal grounds." (Resp. Br. p. 13.)

Respondents base their erroneous claim on the fact that *they told* the California Supreme Court there was no federal question in the case, that *they did not consider* constitutional issues in deciding not to certify petitioner for admission to the bar. They emphasize that they

> "*specifically stated* (to the California Supreme Court) that no evidence of petitioner's social, political or economic views was considered in their determination . . . The decision of the California Supreme Court therefore necessarily determined that, apart from any evidence of political, social or economic beliefs, there was sufficient evidence in the record to sustain the Committee's determination." (Resp. Br. p. 17.)

Since the Supreme Court presented no written opinion stating the grounds on which its decision was based, clearly such argument by respondents is without foundation in fact.

Respondents' further assertion that "There is every indication that the California Supreme Court's decision was based on non-federal grounds" is equally without foundation.* Again one may well ask the basis of this contention since there was no written decision.

If we are to speak of "indications" of the grounds upon which the California Supreme Court's decision was based, then petitioner may reasonably claim that there are many more indications that that court could not and did not avoid consideration of the federal questions presented to that court.

First, respondents cannot escape the significance of the fact that that California court was divided 4-3 in declining to review this case.

Secondly, such non-federal questions as are referred to by respondent are all so interwoven with federal questions as to make division impossible. No fair review of the total record here can escape the conclusion that in view of the extent to which the federal questions dominate this case, the California Supreme Court could not avoid considering the relevant federal questions.

In this connection it should be noted that there is no recorded California case in which a person was denied

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*A further instance of the lack of support in the record for assertions made by respondant is to be found in the bald statement that petitioner "made it clear that he did not consider Russia as having a totalitarian form of government but that the United States did." (Resp. Br. p. 10.) Nowhere in the record can any such statement be found.

admittance to the Bar by reason of his political opinions. All previous recorded cases dealt with conduct involving moral terpitude of a criminal nature.

But even if we assume for purposes of argument that non-federal issues are involved, if no opinion is delivered by the state court or the grounds given for the opinion are not clear and the court does not find adequate non-federal grounds in the record to support the decision below

> "it will be presumed that the state court based its judgment on the law raising the Federal question, and this Court will then take jurisdiction."
>
> *Klinger v. Missouri,* 13 Wall. 257, 263;
>
> *Johnson v. Risk,* 137 U. S. 300, 307;
>
> *Lawrence v. State Tax Commission,* 286 U. S. 276, 282-283;
>
> *Adams v. Russell,* 229 U. S. 353, 358;
>
> *Woods v. Nierstheimier,* 328 U. S. 211;
>
> *Phyle v. Duffy,* 334 U. S. 431.

See also:

> *Williams v. Kaiser,* 323 U. S. 471, 477.

Petitioner submits that his case certainly meets the above test—and this Court therefore has jurisdiction. For, even assuming the existence of non-federal grounds in this case, the non-federal ground must be independent of the federal ground. "Where the non-federal ground is so interwoven with the other as not to be an independent matter . . . our jurisdiction is plain." (*Enterprise Irrigation District, supra.*)

III.

Conclusion.

The brief of respondent raises no basic reasons for denial of petition; on the contrary the burden of the argument of respondent would tend to support the petition of petitioner in his assertion that the actions of the respondent below constituted a denial of petitioner's constitutional rights.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

SUBJECT INDEX

PAGE

I.

Opinion below 1

II.

Jurisdiction 3

III.

Constitutional provisions and statutes involved 4

IV.

Questions presented 7

V.

Statement of material facts 8

VI.

The Supreme Court properly assumed jurisdiction 18

A. Petitioner properly raised the constitutional points in timely fashion in the tribunal below 18

B. The denial of the petition for writ of review by the California Supreme Court was a final judgment within the meaning of 28 U. S. C. A. 1257 22

C. The refusal to review by the Supreme Court of California was based upon an evaluation of the constitutional significance of the evidence 24

1. The only reasons indicated by the Committee of Bar Examiners for denying petitioner admission to the Bar were reasons which violated petitioner's constitutional rights 25

2. Any possible independent state ground asserted herein is not substantial or sufficient 32

PAGE

VII.

Summary of argument 34

VIII.

Argument 37

A. The right to practice law is a right of liberty and property protected by the Fourteenth Amendment 37

B. When concepts such as "good moral character" are interpreted to include within them political beliefs, opinions and associations, they violate petitioner's rights under the First and Fourteenth Amendments 42

C. The denial to the petitioner of the right to practice law although otherwise qualified because of newspaper articles written by him and his views otherwise expressed constituted a denial of due process and the equal protection of the law 49

D. The procedures adopted by the Committee of Bar Examiners constituted a denial of due process 53

E. Petitioner was denied due process of law when the Committee of Bar Examiners retroactively established political tests for admission to the bar 55

IX.

Conclusion 57

TABLE OF AUTHORITIES CITED

CASES	PAGE
Allen v. Arguimbau, 198 U. S. 149	24
Allgeyer v. Louisiana, 165 U. S. 578	40
Arctander, In re, 110 Wash. 296, 188 Pac. 380	52
Atchison, T. & S. F. Ry. Co. v. Public Utilities Commission, 346 U. S. 346	23
Bridge Proprietors v. Hoboken Land and Improvement Company, 1 Wall. 116, 68 U. S. 142	18
Brown et al. v. Board of Education of Topeka, 347 U. S. 483	49
Brydonjack v. State Bar, 208 Cal. 439	22, 23
Burch, In re, 73 Ohio App. 97, 54 N. E. 2d 803	50, 51
Chaires v. City of Atlanta, 164 Ga. 755	48
Chicago Housing Authority v. Blackman, 4 Ill. 2d 319, 122 N. E. 2d 522	39
Clifton, In re, 33 Idaho 614, 196 Pac. 670	52
Cole v. Young, 351 U. S. 536	48
Columbia Water Power Company v. Columbia Electric Street Railway Light & Power Co., 172 U. S. 475	19
Craig v. Harney, 331 U. S. 367	32
Crowell v. Randall, 35 U. S. 368	24
Cummings v. Missouri, 71 U. S. 277	40
Dent v. West Virginia, 129 U. S. 114	40
Frost & Frost Trucking Company v. Railroad Commission of California, 271 U. S. 583	41
Garland, Ex parte, 71 U. S. 333	40
Garland, In re, 219 Cal. 661, 28 P. 2d 354	55
Goodell, In re, 39 Wis. 232	39
Green Bay & M Canal Company v. Patten Paper Co., 172 U. S. 58	19
Hannegan v. Esquire, Inc., 327 U. S. 146	42
Hovey, In re, 7 Cal. Unrep. 203, 81 Pac. 1019	55

PAGE

Johnson v. Risk, 137 U. S. 300 ..... 24, 32
Jordan v. George, 341 U. S. 223 45
Kaukauna Water Power Company v. The Green Bay and Mississippi Canal Company, 142 U. S. 254 30
Korematsu v. United States, 323 U. S. 214 48
Lavine, In re, 2 Cal. 2d 328 22
Lawrence v. State Tax Commission, 286 U. S. 276 32
Lawson v. Housing Authority of City of Milwaukee, 270 Wis. 269, 70 N. W. 2d 605 39
Lawton v. Steele, 152 U. S. 133 48
Liggett v. Baldridge, 278 U. S. 105 41
Local Union No. 10 v. Graham, 345 U. S. 192 25
Maryland Casualty Co. v. Jones, 279 U. S. 792 22
Mayflower Farms v. Ten Eyck, 297 U. S. 266 41
Meyer v. State of Nebraska, 262 U. S. 390 48
Milk Wagon Drivers Union of Chicago Local 753 v. Meadowmoor Dairies, Inc., 312 U. S. 287 ..... 32, 33
Missouri ex rel. Gaines v. Canada, 305 U. S. 337 ..... 48, 49
Missouri ex rel. Hurwitz v. North, 271 U. S. 40 41
Murray v. Charleston, 6 Otto 432, 96 U. S. 432 18
Near v. Minnesota, 283 U. S. 697 42
New York ex rel. Bryant v. Zimmerman, et al., 278 U. S. 63 19
Pennekamp v. Florida, 328 U. S. 331 32
Salot v. State Bar, 3 Cal. 2d 615 ..... 8, 23
Schlemmer v. Buffalo, Rochester & Pittsburgh Ry. Co., 205 U. S. 1 31
Secombe, Ex parte, 60 U. S. 913 47
Semler v. Oregon State Board of Dental Examiners, 294 U. S. 608 41
Shattuck, In re, 208 Cal. 6 23
Smith v. Texas, 233 U. S. 630 ..... 41, 48, 49

PAGE

Spear v. State Bar of California, 211 Cal. 183, 294 Pac. 697 55
St. Louis Iron Mountain and Southern Railway Co. v. Starbird, 343 U. S. 592 19
Summers, In re, 325 U. S. 565 ..... 38, 39
Wells, In re, 174 Cal. 467, 163 Pac. 657 55
West Virginia State Board of Education v. Barnette, 319 U. S. 624 47
Williams v. Kaiser, 323 U. S. 471 32
Yazoo and Mississippi Valley R.R. Co. v. Adams, 180 U. S. 1 19
Yick Wo v. Hopkins, 118 U. S. 356 41

MISCELLANEOUS

Barrett, The Tenney Committee (Cornell Univer. Press, Ithaca), p. 44 46
Chafee, Free Speech in the United States (Harv. Univ. Press, Cambridge, 5th Ed., 1946) 52
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Roget's International Thesaurus (New Ed., 1946) 29
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STATUTES

California Business and Professions Code, Sec. 6000 22
California Business and Professions Code, Sec. 6046 22
California Business and Professions Code, Sec. 6047 22
California Business and Professions Code, Sec. 6060 ..... 4, 25
California Business and Professions Code, Sec. 6062 4
California Business and Professions Code, Sec. 6064.1 ..... 5, 25
California Business and Professions Code, Sec. 6066 22

PAGE

California State Bar Act, Sec. 6 5
California State Bar Act, Rule 10, Sec. 101 5
California Statutes of 1927 (amended 1939) 22
Judiciary Act of 1789, Sec. 25 18
Rules of the Supreme Court of California, Rule 59(b) 6, 21, 23
United States Code, Title 28, Sec. 1257 ..... 8, 22, 23
United States Code, Title 28, Sec. 1257(3) 3
United States Constitution, First Amendment 4, 7, 12, 21, 35, 36, 45, 48
United States Constitution, Fifth Amendment 4, 7, 21, 36
United States Constitution, Fourteenth Amendment 4, 7, 8, 21, 35, 36, 40, 45, 48, 49, 53, 55

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 5.

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITIONER'S OPENING BRIEF.

I.

OPINION BELOW.

No written opinion has been handed down by any Court or other tribunal in this matter.

On February 8, 1954, after hearings before the Southern Subcommittee of the Committee of Bar Examiners of the State Bar of California, the Petitioner received a letter informing him that his application for admission to the Bar had been denied. A copy of this letter is set forth at page 131 of the Record.

After further hearings before the full Committee of Bar Examiners the Petitioner received a letter dated May 17, 1954, reading as follows:

"THE COMMITTEE OF BAR EXAMINERS
of the State Bar of California
458 S. Spring Street
Los Angeles 13

May 17, 1954.

To: Raphael Konigsberg, Applicant
2446 Echo Park Avenue
Los Angeles 26, California.
and
Edward Mosk, Esq., Applicant's Attorney
6305 Yucca Street
Hollywood 28, California.

Pursuant to your request of February 11, 1954, the record in the matter of your application for certification to the Supreme Court for admission to practice law which was before the Southern Subcommittee, has been reviewed by the entire Committee. In addition, a further hearing was held before the Committee on March 13, 1954.

It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of the good moral character required by Section 6060(c) of the State Bar Act, or (2) that you comply with the provisions of Section 6064.1 of said Act.

Your application is denied.

By order of the Committee of Bar Examiners.

Goscoe O. Farley,
Secretary."

This letter constitutes the only notification in the form of an "opinion" received by Petitioner.

A Petition for Review was filed with the Supreme Court of the State of California on or about July 24, 1954, requesting Review of the denial of admission by the State Bar. On April 20, 1955, this Petition for Review was denied without written decision although Chief Justice Gibson and Justices Traynor and Carter were "of the opinion the writ should issue." [R. 132.]

II.
JURISDICTION.

The Order of the Supreme Court of California declining to review the denial of the Committee of Bar Examiners of the State Bar of California constitutes a final judgment under the laws of the State of California. The provisions of the Business and Professions Code provide that the only legal recourse of an applicant denied admission to the Bar by the State Committee of Bar Examiners is a Petition for Review to the Supreme Court of California. When the Supreme Court of California declined to Review on April 20, 1955, no further proceedings were available to the Petitioner in the State of California.[1]

A Petition for a Writ of Certiorari was filed with this Court and the Court accepted jurisdiction and made its Order on 21st day of May, 1956.

The Jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

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[1]See pages 22 to 24 for further discussion of this point.

III.
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

A. The provisions of the United States Constitution involved are:

1. *The First Amendment:*

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. *The Fifth Amendment:*

"No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

3. *The Fourteenth Amendment:*

". . . No state shall make or endorse any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B. The California Statutes involved are:

1. Business and Professions Code, Section 6060. QUALIFICATIONS FOR APPLICANTS:

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall.

(a) Be a citizen of the United States

(b) Be of the age of at least 21 years

(c) Be of good moral character

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final examination . . ."

2. Business and Professions Code, Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED;

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, Ch. 179, Sec. 1.)"

C. RULES AND REGULATIONS INVOLVED:

1. Rules regulating admission to practice law in California (adopted pursuant to the provisions of the State Bar Act (Chap. IV, Div. 3, of the Bus. and Prof. Code) as approved by the Board of Governors of the State Bar of California, September 8, 1937):

a. "Section 6. In the conduct of investigations and upon the hearing of all matters, the committee, or any subcommittee, having jurisdiction may:

(a) Take and hear relevant evidence;

(b) Administer oaths and affirmations;

(c) Compel, by subpoena, the attendance of witnesses and the production of relevant books, papers and documents."

b. "Rule 10. Moral Character.

"Section 101. Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsay rule, nor any other technical rule of evidence, need be observed; but an ap-

plicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based, and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the opportunity of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."

2. Rule 59(b) of the Rules of the Supreme Court of California reads:

"[*Review of other decisions*]. A petition to the Supreme Court to review any other action of the Board of Governors of the State Bar [than a decision for disbarment or suspension], or of any committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act. shall be filed within 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of the State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service on the Board of Governors of 3 copies of the petition and the brief. Within 10 days after service of the petition, the Board of Governors may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered the Board of Governors, at least 20 days before the return day, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which 3 copies shall have been served on the Board of Governors."

IV.
QUESTIONS PRESENTED.

The questions presented are the following:

1. Whether the denial of Petitioner's application for admission to the Bar of the State of California by the Committee of Bar Examiners, based upon the newspaper articles written by the Petitioner and the political opinions, ideas and associations allegedly held by the Petitioner, constitute a denial and limitation of the free exercise of speech and press and thereby constitutes a violation of due process and equal protection of the laws under the First and Fourteenth Amendments to the Constitution of the United States?

2. Whether the denial of admission to the Bar, based upon "failure" to establish good moral character because of his alleged political opinions, ideas and associations constitutes a deprivation of a right to follow one's calling and deprives Petitioner of life, liberty, property and the pursuit of happiness contrary to the provisions of the Fifth and Fourteenth Amendments?

3. Whether the interpretation of the State Bar Act of California placing upon the applicant the burden of proof to establish that he is of good moral character and does not advocate the overthrow of the government by force and violence, as applied by Respondent, deprives Petitioner of due process and equal protection of the law under the Fifth and Fourteenth Amendments of the Constitution of the United States?

In addition to these questions initially raised in the Petition for Writ of Certiorari by the Petitioner, the Court in granting the Writ of Certiorari invited counsel

for respective parties to consider in their briefs and arguments the following issues:

1. Were Petitioner's claims under the United States Constitution duly raised before the Supreme Court of California?

2. Was the Supreme Court of California's denial of a Petition for a Writ of Review merely a refusal by that Court to exercise its discretionary jurisdiction, or is it to be deemed a disposition, "in the nature of a review" (*Salot v. State Bar*, 3 Cal. 2d 615, 617), and as such a final judgment within the meaning of 28 U. S. C., Section 1257?

3. Assuming the latter, was the determination of the Supreme Court of California based upon a rejection of claims arising under the Fourteenth Amendment of the Constitution of the United States, and more particularly, upon an evaluation of the constitutional significance of the evidence summarized under "1" on page 5 through the top of page 8 of the brief filed by the Respondents on December 8, 1955, in opposition to the Petition for the Writ of Certiorari herein?

V.

STATEMENT OF MATERIAL FACTS.

The material facts are found in the transcript of the record of the hearings before the Committee of Bar Examiners. This record contains the initial hearing before the Southern Subcommittee [R. 4-46], subsequent hearings prior to decision of the Southern Subcommittee of Bar Examiners [R. 46-96], and the further hearing held before the full Committee of Bar Examiners. [R. 96-131.]

The record establishes that Petitioner graduated from Ohio State University in 1931, receiving a Bachelor of Arts Degree. [R. 5.] He spent one year teaching American History and English Literature in the high schools of Cleveland, Ohio. [R. 105.] In 1934 he entered Ohio State University for graduate work and obtained a Master of Arts Degree in 1935. Subsequently he was appointed a Supervisor by the Department of Health of the District of Columbia. In June, 1936, he came to Los Angeles, California, where he served variously as Assistant Director of the Research Department of the Council of Social Agencies, as Director of Community Surveys for the Federation of Jewish Welfare Organizations, as a District Supervisor of the California State Relief Administration, and as Director of Social Services of the City of Hope Sanitarium in Duarte, California. [R. 5-6.]

Petitioner served in the armed forces in the United States from October, 1942 to April, 1946, at home and overseas. Upon enlisting, he was commissioned a 2nd Lieutenant in the Medical Administrative Corps and served as Commanding Officer of the Detachment of Patients, Lovell General Hospital, Fort Devens, Massachusetts. [R. 6.] He was selected to attend the Army Staff School at Washington & Lee University for training as an Orientation Officer in the Army's Information and Education program, and later served in that program in North Africa, Italy, France and Germany. [R. 105.] In his last post, with the rank of Captain, he served as Orientation Officer for the Seventh United States Army in Germany, supervising that program for over 400,000 troops. Among his duties was the editing of three Army orienta-

tion publications, which writings reflect his convictions. [R. 12-15, 18.]

In this connection, the record establishes that Petitioner was urged by the President of the City of Hope Sanitarium, for whom he was employed at the time, to secure a deferment from military service. He declined to do so [R. 19] and the reasons and motivations behind this are expressed in an article written for the National Jewish Monthly magazine, entitled "Why I Am In This Fight," which is included in its entirety as one of the Exhibits. [R. 286 ff.]

On his return to civilian life, Petitioner was active in many civic affairs and was a candidate for public office on three occasions: for the Los Angeles Board of Education in 1947 and 1949, and for the California State Assembly in 1950. [R. 105-106.] He wrote a series of articles for two Los Angeles newspapers, the California Eagle and the California Jewish Voice. [R. 11.]

After discharge from the Army, Petitioner returned to his employment with the City of Hope Sanitarium. In 1950, he entered the University of Southern California Law School and pursued his legal studies there continuously and full time until his graduation in June, 1953. [R. 105.]

On the 4th day of December, 1950, the Petitioner filed with the Committee of Bar Examiners of the State of California his application to register as a student of law. [R. 260 ff.] His petition was filed in the form required by the Committee of Bar Examiners and he complied with all requirements of the Committee of Bar Examiners relative to the study of law in the State of California.

Then, on June 29, 1953, in accordance with the requirements of the Committee of Bar Examiners, Petitioner filed a document entitled "Application for Examination for Admission to Practice Law." [R. 266 ff.] Just sixteen days prior to the Bar Examination conducted by the Committee of Bar Examiners, Petitioner was advised by the Southern Subcommittee of the Committee of Bar Examiners that he must personally appear before the Committee, although he was not at this time informed of the purpose of this hearing. [R. 2.] Petitioner appeared at a hearing on the 25th day of September, 1953, without counsel, at which time he was interrogated under oath by the Committee. Thereafter, and at the request of counsel subsequently employed by the Petitioner, Petitioner was allowed to take the Bar examination subject to further hearings to determine his fitness for admission to the Bar on the basis of good moral character.

Further hearings were held before the Southern Subcommittee of the Committee of Bar Examiners on September 9, 1953, and January 27, 1954. On the 8th day of February, 1954, your Petitioner was informed by the Southern Subcommittee of the Committee of Bar Examiners, that his application for certification for admission to the Bar had been denied. [See R. 131 for a full copy of the letter of denial.]

Thereafter, your Petitioner appealed to the full Committee of Bar Examiners, and requested a review of the proceedings of the Southern Subcommittee. Such a hearing was held on the 13th day of March, 1954; later, on the 17th day of May, 1954, Petitioner received a notice that his Petition for admission to the Bar had been denied. [For the record of this hearing see R. 96-130.]

At the first hearing, Petitioner testified to his personal background and work record as set forth hereinbefore.

The Committee immediately thereafter submitted to Petitioner twenty-one photostatic copies of articles written by the Petitioner for The California Eagle, a weekly newspaper published in Los Angeles. The Petitioner identified these articles as written by him. The Committee then submitted for identification a copy of a statement given by the Petitioner at the time he was called for a hearing before the California State Senate Committee on Un-American Activities (referred to hereafter as "the Tenney Committee"). [R. 13.]

Later the Committee members asked Petitioner, "I take, it, Mr. Konigsberg, the totalitarian form of government is repugnant to you."

"Answer: Very definitely." [R. 19.]

The hearing then proceeded with a discussion and questions by the Committee regarding the totalitarian nature of the regime in Russia, the attitude of the Petitioner towards North Korea's invasion of South Korea, the "liberation of the central European countries such as Czechoslavakia," the Stockholm Peace Petition, and several organizations before whom the Petitioner had lectured. [R. 25-28.]

The Petitioner was asked whether he was a member of the Communist Party. He declined to answer this question on the ground that it was an infringement of his rights under the First Amendment. He specifically and repeatedly stated, however, that he does not now nor had he ever advocated the overthrow of the government by force and violence. [R. 29-30.]

The Petitioner was asked, "Are you a Communist?"[2] to which he answered, "I will say no, definitely no. The only thing I would describe myself very simply as one who has read a lot, studied a lot, because as a teacher of history and political education in the army I believe strongly in the fundamental concepts of our democratic system." The Committee then noted "Your answer that you gave (earlier—when Petitioner grounded his refusal to reply on the First Amendment) was directed to the question 'Are you a member of the Communist Party?' " Petitioner answered, "Yes, and solely to that. If you want a categorical answer to 'Are you a Communist?' the answer is no."[3] [R. 40.]

The Committee then presented a witness, Alice King Bennett, who testified she knew the Petitioner as a member of a "small unit in the Communist Party" in 1941. [R. 42.] When asked whether she identified Mr. Konigsberg as the person whom she had known and "Are you certain . . . of the identification?" she responded that "There is no one else here who is the least bit familiar to me in appearance except this gentleman" (referring to Mr. Konigsberg). [R. 43.]

Konigsberg declared he did not recall knowing Mrs. Bennett. [R. 39.] Then under cross-examination at a subsequent hearing, Mrs. Bennett conceded that she had

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[2]This question referred to whether Petitioner was a "Philosophical Communist" as against one's being a member of the Communist Party. [R. 40.]

[3]It should be noted in this connection that at a subsequent hearing, Petitioner indicated that he had erred in answering this question. He stated that the same deep personal principle which caused him to decline other questions should also have governed his answer to this question; and that if the same question were asked again he would on this same principle decline to answer it. [R. 78.]

been a member of a Communist group composed exclusively of social workers and containing all social workers in the community, but that Konigsberg (although a social worker at the time) was not a member of that group. [R. 50.] When asked "Was anything said by any person present at any of these meetings advocating the overthrow of the Government by force and violence?" Mrs. Bennett replied, "I cannot recollect any specific statements now by anybody including myself" and "I don't recollect anything he (Konigsberg) said at all or anybody else said." [R. 55-56.] And finally, in response to the question "Isn't it true the only reason you identified him was because he was the only person present in the room you had ever seen before?" Mrs. Bennett responded, "That is right." [R. 56.]

At the next session of the Committee, the Petitioner submitted materials from Army Orientation Guides and other military documents and testified that the actions he had taken as a civilian after his discharge from the Army were basically predicated on the indoctrination and materials which he had received while in the Army. [R. 58-60.]

Petitioner submitted an article originally written for the Army Orientation Program as part of an assignment at the Army Staff School at Washington and Lee University, which was later reprinted in a national magazine. In part, Petitioner stated that:

> "I want to feel free to follow certain professional and cultural interests. I know that if fascism wins all this will be impossible so I must help defeat fascism. I know I cannot do this alone . . . I want the United States of America to be a mighty democratic nation . . . I know that democracy

> can be lost, and how it can be lost. I have learned that if fascism comes here I myself will be to blame —if I have not done everything in my power to prevent it. If I do the best I can now I will not have to reproach myself later, win or lose. I feel personally responsible for my country's fate. I want to help shape America's future . . ." [R. 63-64.]

At the final hearing before the full committee of the Committee of Bar Examiners, the Petitioner was again referred to his testimony before the Tenney Committee and was asked "Is there anything about that testimony that you wish to correct in view of the present circumstances?" and he was asked, with regard to the articles in The California Eagle, whether the position taken in these articles was "still your position?" [R. 110-111.]

In response to the question "You made the statement that you have nowhere in these proceedings invoked the Fifth Amendment?" Petitioner respondent, "That is right." And the chairman of the Committee responded: "You have been consistently invoking the First Amendment." [R. 120.]

At the last session of the subcommittee, and at the prior suggestion of the subcommittee, Petitioner submitted letters directed to the Committee of Bar Examiners from prominent persons in the community attesting to the good moral character of the Petitioner. The Committee had specifically suggested that in the interest of time rather than bring witnesses before it, Petitioner secure such communications. [R. 71.] Petitioner therefore submitted letters from practising attorneys, responsible business men in the Los Angeles community, doctors, ministers, professors at universities in the City of Los Angeles, social workers and other professional persons. [R. 89-92.]

These letters are set forth in full on pages 287 to 334 of the record and include some of the following comments:

Dr. H. I. Lee wrote of Konigsberg that:

> "In my opinion I have found his moral and ethical standards to be of the highest caliber. He possesses qualities of sound judgment and great initiative. Mr. Konigsberg has impressed me as a man representing the finest ideals of Americanism and without qualification I approve his fitness for the practice of law." [R. 305.]

Rabbi Jehudah Cohen, Pacific Regional Director for the B'nai B'rith Hillel Foundations in American universities wrote:

> "I have always regarded Mr. Konigsberg as a person of exemplary character, genuine honesty and integrity and thorough reliability. I have been impressed by his intellectual capacity and achievements, his genial and outgoing personality, and the splendid atmosphere which prevails in his home and in his filial relationship." [R. 306.]

The Right Reverend Monsignor Thomas J. O'Dwyer of the Archdiocese of Los Angeles wrote that:

> "I do not hesitate to recommend him to you. I am satisfied that he will measure up to the highest requirements established for members of the legal profession." [R. 307.]

Victor S. Netterville, Instructor in Law at the University of Southern California, wrote that:

> "It is my impression that Mr. Konigsberg is a man with the courage of his convictions, but not one who holds those convictions blindly or with any but the most honest motives. He seems to hold the

Constitution in high esteem and is a vigorous supporter of Civil Rights, but it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time to time of balancing the interests of the individual against the interests of society when the legislature takes action to protect society as a whole from threatened dangers. Throughout our discussions—discussions in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussions. He indicated to me an open mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen. Based solely then upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the Bar." [R. 311.]

Chauncy A. Alexander, Executive Director of the Southern California Society for Mental Hygiene, wrote that:

"In my opinion Mr. Konigsberg is devoted to the highest professional standards and principles and is forthright in his expression and support of them. . . .

"In all the professional contacts that I have had with him, he has demonstrated a high standard of integrity and ability. I have had periodic occasion to participate with him in health and welfare agency committees and he has demonstrated a devotion to democratic principles and participation." [R. 312.]

Z. L. Gulledge of the California Department of Education, Division of Special Schools and Services, Bureau of Vocational Rehabilitation, wrote that:

"In all my associations with Mr. Konigsberg, he has proved a person of unquestioned integrity and

sincerity and one who has devoted considerable time and energy to the problems of community interest. His broad professional experience has, in my opinion, been excellent preparation for the practice of law. I believe that Mr. Konigsberg will make an eminent contribution to the legal profession.

"On the basis of Mr. Konigsberg's fundamental qualities of character, I am happy to recommend him to you." [R. 316.]

Mrs. Jeanne G. Young, Director of Medical Social Service at the Cedars of Lebanon Hospital in Los Angeles, wrote:

"During the time of our association I was most impressed by Mr. Konigsberg's sincerity and integrity, both as an individual and in his professional capacity. I found him to be a person of principle conviction and willing to defend his principles even at great personal sacrifice." [R. 318.]

VI.

THE SUPREME COURT PROPERLY ASSUMED JURISDICTION.

A. Petitioner Properly Raised the Constitutional Points in Timely Fashion in the Tribunal Below.

This case falls within provisions of Section 25 of the Judiciary Act of 1789.

From earliest times, this Court has held it "altogether superfluous to require a party to set out specifically the provisions of the Constitution of the United States on which he relies for the action of the Court in the protection of his rights." (*Bridge Proprietors v. Hoboken Land and Improvement Company,* 1 Wall. 116, 68 U. S. 142. See also *Murray v. Charleston,* 6 Otto 432, 96

U. S. 432; *Columbia Water Power Company v. Columbia Electric Street Railway Light & Power Co.*, 172 U. S. 475.)

It is true that a distinction is drawn between a claim of a title, right, privilege or immunity under the Constitution and cases questioning the validity of a statute. A greater degree of particularity is required in the latter situation.

The facts in the instant case, however, are such as to qualify under either interpretation of the Judiciary Act. (See *Green Bay & M Canal Company v. Patten Paper Co.*, 172 U. S. 58; *Yazoo and Mississippi Valley Railroad Co. v. Adams*, 180 U. S. 1; *New York ex rel. Bryant v. Zimmerman, et al.*, 278 U. S. 63; *St. Louis Iron Mountain and Southern Railway Co. v. Starbird*, 343 U. S. 592.)

From the earliest stage of these proceedings, the Petitioner asserted the Constitutional rights which are now being pleaded before this Court. At the very first hearing before the Southern Subcommittee of the Committee of Bar Examiners, at which time the Petitioner appeared without counsel, he asserted in response to the question as to whether he was a Communist that ". . . the right of political opinion is protected under the First Amendment and is binding on the States." [R. 30]; and few moments later, he stated that ". . . under those circumstances, the Constitutional guarantee of free speech means nothing if it doesn't mean you can keep your views to yourself. . . ." [R. 34.]

At this very same first hearing, additional examples of Petitioner's assertion at all times of his Constitutional rights are to be found on pages 30, 31, 33, 34, 35 of the

Record; similarly at the second hearing, he again asserted his rights. [See R. 72, 76, 77, 80.]

At the hearing before the full Committee of Bar Examiners, Petitioner again specifically asserted his Constitutional rights. [See R. 100, 103, 104, 109, 111, 113, 115, 117, 118, 120, 122, 126, 127.]

While some of these assertions were in general terms, in many cases they specifically set forth the section of the Constitution claimed. Thus, Petitioner told the Committee of Bar Examiners that questioning him about his political views where other applicants for admission are not so questioned was "a violation . . . of the equal protection clause of the Fourtenth Amendment of the Constitution of the United States and Article I, Sections 11 and 12 of the California Constitution." [R. 100.] Similarly Petitioner told the Committee that its act in refusing to certify him for admission to the Bar without informing him of any findings of fact was "such an unreasonable act as to constitute both abuse of discretion and infringement of my rights under Article I, Section 1, of the California Constitution and under the Fourteenth Amendment of the Constitution of the United States" [R. 104]; and he asserted a violation of freedom of press when questioned about certain articles which he had written for the California Eagle. [R. 111.]

It must be noted that all of these hearings before the Committee of Bar Examiners were held on an informal basis although all testimony was transcribed and appears in the record of this case; nevertheless Petitioner asserted at every step of this proceeding the basic Constitutional rights for the violation of which he now asks redress of this Court.

Having been denied admission by the Committee of Bar Examiners, your Petitioner had left to him only the procedure as set forth in the State Bar Act—to request the Review of the proceedings under Rule 59(b) of the Rules of Appeal of the Supreme Court of California.

Petitioner then duly filed with the Supreme Court of California the jurisdictional document required for action by the Supreme Court. This document was entitled "Petition to Review Denial of Application of Raphael Konigsberg for Admission to the State Bar of California Under Rule 59(b) of the Rules of Appeal." [R. 1.]

The said petition is in the nature of the pleading which requests Review by the Supreme Court. It sets forth the reasons for Review by the Supreme Court of California.

Points 9, 10 and 11 specifically and without equivocation assert the violation of the Petitioner's rights under the First Amendment to the Constitution of the United States, the Fifth Amendment to the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States. [R. 3.]

Respondents in their answer denied "each and all of the allegations of paragraph VIII of the petition" and thus themselves placed at issue the Constitutional points raised by the Petitioner in his Petition to the California Supreme Court.

Respondents argued at some length in their "Brief In Opposition To The Petition For Writ Of Certiorari" that the Petitioner had waived the Constitutional points by reason of his failure to argue them at length in his brief before the California Supreme Court. Since the briefs of the Parties before the State Supreme Court are not properly a part of the record in this proceeding (see

Maryland Casualty Co. v. Jones, 279 U. S. 792), it would appear to be improper to consider any references to these briefs.[4]

B. The Denial of the Petition for Writ of Review by the California Supreme Court Was a Final Judgment Within the Meaning of 28 U. S. C. A. 1257.

The practice of law in California is regulated by the State Bar Act (Bus. and Prof. Code, Secs. 6000, *et seq.*, Stats. 1927, amended 1939). Among other things, the Act sets forth the conditions for admission to practice and it provides for the establishment of an examining committee (the Committee of Bar Examiners) having the power to examine applicants and to certify to the Supreme Court those qualifying for admission as well as to adopt reasonable rules and regulations to enable it to fulfill its statutory authority. (Bus. and Prof. Code, Secs. 6046, 6047.)

Admission to practice law is considered to be within the "inherent powers" of the Court (*Brydonjack v. State Bar,* 208 Cal. 439; *In re Lavine,* 2 Cal. 2d 328, 331), and the Act itself provides for a review by the Supreme Court of California of any refusal of certification by the Committee of Bar Examiners.[5] Hence, the legislatively

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[4]Even assuming that the briefs were properly part of the record before this Court, Petitioner established in detail in his closing brief in the Petition for Writ of Certiorari, that the constitutional points were not waived but were implicitly and explicitly argued therein. (See Petitioner's Response to Respondent's Brief in Opposition to Petition for Writ of Certiorari, pp. 2-5.)

[5]Business and Professions Code, Section 6066, "Any person refused certification to the Supreme Court for admission to practice may have the action of the Board or any Committee authorized by the Board to make a determination on its behalf pursuant to the provisions of this chapter, reviewed by the Supreme Court in accordance with the procedure prescribed by the Court."

created Committee of Bar examiners has no direct power to admit or exclude. The function of the examiners is to investigate and recommend, not to make final orders, and the State Bar is considered an arm or branch of the court with recommendatory powers only. (*Brydonjack v. State Bar, supra; In re Shattuck*, 208 Cal. 6.) Thus, in California in matters of admissions and disbarment, the Supreme Court is a court of original jurisdiction as well as the highest court of the state in which judgment could be had.

What is the nature of a denial of a petition for review in these circumstances? Rule 59(b) of the Rules of the Supreme Court of California provides that a petition to review the action of the Committee of Bar Examiners . . . "shall specify the grounds relied on. . . ." Obviously, the petition must therefore set forth the Petitioner's grounds and contentions as to how and why the Committee of Bar Examiners acted improperly in refusing him admittance. Petitioner set forth his grounds in a petition filed under this Section. [R. 1-4.] Additionally, in this case, the State Supreme Court had before it the entire record of the proceedings before the Committee of Bar Examiners. Thus the denial of the Petition for Review was clearly "in the nature of a review" *Salot v. State Bar*, 3 Cal. 2d 615, 617, and even more—an acceptance of the Committee of Bar Examiners' recommendation that certification for admission be denied and an approval of the action of the Committee. As such it was a final judgment within the meaning of 28 U. S. C. A. 1257.

In *Atchison T. & S. F. Ry. Co. v. Public Utilities Commission*, 346 U. S. 346, 348-349, where the California Supreme Court declined to review an order of the Public Utilities Commission this Court recognized

that such a refusal to review was a final judgment when it stated:

> "The appellants presented squarely to the Supreme Court of California their contention that in the allocation of costs, these orders took their property without due process of law and are so arbitrary and burdensome as to constitute an interference with interstate commerce in violation of the Constitution of the United States. In sustaining the Commissioner's orders by denying writs of review, the Supreme Court upheld the statute as applied by the Commission, and the cases are properly here on appeal."

C. The Refusal to Review by the Supreme Court of California Was Based Upon an Evaluation of the Constitutional Significance of the Evidence.

Petitioner is well aware of the line of cases holding that where a case involves a Federal question but may have been disposed of on some independent State grounds, the Court will not assume that the matter was determined below on the Constitutional ground. (See *Crowell v. Randall,* 35 U. S. 368; *Johnson v. Risk,* 137 U. S. 300; *Allen v. Arguimbau,* 198 U. S. 149.) These cases are not in conflict with the position of the Petitioner in this case.

If the sole basis for the determination below rested on factors contravening the Constitutional rights of the Petitioner, the jurisdiction of this Court is clear. While Respondent contends in opposing this Petition that there were reasons other than Constitutional for denying the Petitioner admission to the Bar, a careful reading of the record fails to disclose such reasons.

1. The Only Reasons Indicated by the Committee of Bar Examiners for Denying Petitioner Admission to the Bar Were Reasons Which Violated Petitioner's Constitutional Rights.

The letter of the Committee of Bar Examiners to the Petitioner dated May 17, 1954 asserts only two reasons for denying Petitioner admission to the Bar: First, that the Petitioner did not sustain the burden of proof that he was possessed of the good moral character required by Section 6060(c) of the State Bar Act, and second, that he did not sustain the burden of proof that he complied with the provisions of Section 6064.1 of the Act. Respondent's carefully phrased letter of denial avoided disclosing any indication of the specific basis of its decision.

In *Local Union No. 10 v. Graham,* 345 U. S. 192, 197, Mr. Justice Burton pointed out that,

> "In a case of this kind we are justified in searching the record to determine whether the crucial finding by the state courts had a reasonable basis in evidence."

And in the same case Mr. Justice Douglas in his dissent pointed out that "great rights will be lost by the absence of findings, by the generality of findings, or by the vagueness of decrees."

A search of the record based upon which the two paragraph letter became the only "finding of fact" discloses that the questions asked of the Petitioner related only to the following points of which the examples set forth below are typical:

1. *Articles written by Petitioner for newspapers in the City of Los Angeles.*[6]

"Mr. Sterling: I assure you I don't want to get into a debate on the subject, but the thing that strikes me about the editorial line expressed in your writings in the Eagle is that it is not anti-communist, and I should think you would now realize that the communist government as it exists in Russia is a totalitarian regime and that therefore you would be *anti-communist* in your orientation of the citizen." [R. 19-20.]

"Q. And from having glanced at the article you would say that is one you might have written during that period? A. Yes.

Q. Do you believe that that is helpful education to the citizenry generally?" [R. 23.]

". . . I referred you to this editorial, 'The Gangsters, Incorporated', to ascertain whether or not you felt that this was a beneficial bit of education, something that would help America, help its citizens." [R. 24.]

". . . Now that is two paragraphs taken from your article as indicated. What I am asking you is do you feel that that is the proper approach educational-wise for a person who seeks to be a member of the Bar? I am just trying to get your personal view. I am not criticizing. I am just asking." [R. 25.]

"Mr. Konigsberg: I presume I did if that is an accurate copy of the column I wrote.

Mr. Fuller: Is that still your position?

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[6]See "Respondent's Brief in Opposition to Petition for Writ of Certiorari" from the bottom of page 5 to the top of page 8, where respondents emphasize their reliance on the Eagle articles as "the evidence most directly relevant to the Committee's determination."

Mr. Konigsberg: How do you mean 'still my position'?

Mr. Fuller: Is that still a true statement? Is that what you would testify to be a true statement?" [R. 114.]

"Mr. Fuller: And would you make that same statement today?" [R. 115.]

2. *The alleged political views or associations of the Petitioner.*[7]

"Mr. Sterling: Don't you see some analogy between Germany's invasion of Poland and North Korea's invasion of South Korea and subsequent events with the Chinese Communist support of North Koreans? . . .

Mr. Sterling: Don't you think that the Korean business was an indication of aggression by a form of government which appears to be totalitarian?" [R. 21.]

"Q. Did you ever participate in the affairs of the California Legislative Conference?" [R. 26.]

"Q. Have you ever heard of the People's Educational Center?" [R. 27.]

". . . Who was Sidney Davidson? A. I don't know.

Q. Don't you recall Sidney Davidson? A. No, I don't. . . ." [R. 27-28.]

"Q. Mr. Konigsberg, have you ever knowingly participated in an organization which you then be-

[7]See pages 9-10 of Respondents Brief in Opposition to Petition for Writ of Certiorari.

lieved was sympathetic to the communist cause? A. No, I can't say I knowingly did that, because I don't think it would have made a great deal of difference to me if I had known one way or the other, assuming that the objectives such as those I have told about in the Army orientation program and so on, whether it might be a School Board election, and as I pointed out I was a candidate twice sponsored by the Citizens Committee for Better Education. I don't recall the specific issue arising, but if you are asking me I don't think it would have made a great deal of difference to me who was supporting the organization or the campaign, if the objective was the same, say a better School Board or whatever the issue might have been." [R. 31-32.]

"Mr. Fuller: What organizations do you presently belong to?" [R. 109.]

"Mr. Fuller: Is is your present position that Dennis should be freed from that conviction?" [R. 112.]

3. *Testimony given by Petitioner before a State legislative committee.*[8]

"Mr. Konigsberg: No, sir, I haven't re-read it (referring to his testimony before the Tenney Committee). I had forgotten about it until Mr. Freston referred to it in the first hearing. I don't recall what is in it. I have a general idea, yes.

Mr. Fuller: Do you have any reason to change your testimony, your position you took in that? Is that still your position, whatever you may have said at that time?" [R. 109-110.]

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[8]See pages 8-9 of Respondents' Brief in Opposition to Petition for Writ of Certiorari.

"Mr. Fuller: Is there anything about that testimony that you wish to correct in view of the present circumstances?" [R. 110.]

"Mr. Fuller: The position evidenced there would be your position at present?" [R. 110.]

Nowhere in the record is there any single question asked which relates in any manner, remote or otherwise, to any normal or past definition of "moral character."[9]

Within a few moments after the commencement of the first hearing Petitioner was handed twenty-one photostatic copies of the California Eagle [R. 8] and questioned about the articles; and from this beginning the questions continued almost exclusively in the political realm. Petitioner was not questioned as to his honesty, his ethics, or his integrity. Obviously, the Committee was satisfied that in these areas Petitioner's character was beyond question.

Since the rules of the committee itself specifically require it to give notice to the Petitioner of the grounds upon which it is denying him admission to the Bar, it can only be concluded that the Respondent contends that the questions asked of Petitioner at the hearings in some manner constituted putting him on notice of the grounds upon which it planned to base its decision.

[9] *Funk and Wagnall* New College Standard Dictionary of the English Language, New York and London, 1947, defines "moral" as "pertaining to character and behavior from the point of view of right and wrong, and obligation of duty; pertaining to rightness and duty in conduct. (2) Conforming to right conduct; actuated by a sense of the good, true and right; good; righteous; virtuous. (3) Concerned with the principles of right and wrong; ethical; as, moral philosophy, moral values . . . .", and it should be noted that Roget's International Thesaurus, New Edition (1946), shows as synonymous for "moral"—"ethical, upright, virtuous."

An analysis of the first hearing indicates that approximately[10] one hundred sixty-one questions were asked of the Petitioner. Of these 51 or 31% were about his newspaper writings; 20% about his appearance before the Tenney Committee; 25% about his political beliefs generally; 20% about other organizations to which he may have belonged (all in the political area), and only about 4% of the questions inquired into his army record or his personal background. Not a single question was asked about his honesty, ethics, morality, integrity or other characteristic relating to the practice of law.

It thus becomes clear that while the Respondent asserts that it reached its decision on State grounds because Petitioner had not sustained his burden of proof, nevertheless, the questions which were designed to determine if Petitioner met his burden of proof were all questions which could not properly have been asked and which contravened the Constitutional rights of the Petitioner.

The basic principle involved here was enunciated in *Kaukauna Water Power Company v. The Green Bay and Mississippi Canal Company,* 142 U. S. 254. In this case, the Court pointed out that:

> "Notwithstanding the inhibition of the Constitution is not distinctly put in issue by the pleadings,[11] nor directly passed upon in the opinion of the Court, it

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[10]Obviously, the nature of the hearing and the exchanges which took place between questioners and witness makes it impossible to have an exact count of questions. The figures given here, however, are substantially correct, and while no count was made of the three other hearings, the nature of the hearings was such as to indicate that no substantial difference in the percentages would occur in these hearings.

[11]Which is not the situation here.

> is evident that the Court could not have reached a conclusion adverse to the defendant company without (a finding) . . . . which is equivalent to saying that it had not been deprived of its property without due process of law."

Thus, the Court pointed out that the adjudication of the question *necessarily* involved the disposition of a Federal question.

To the same effect is *Schlemmer v. Buffalo, Rochester & Pittsburgh Railway Co.*, 205 U. S. 1, 11, where the Court pointed out that:

> "If the question is duly raised and the judgment necessarily, or by what appears, in fact involves such a decision, then this Court will take jurisdiction, although the opinion below says nothing about it."

In the Konigsberg case we have no written decision of the Supreme Court. But we have a record which contains only questions which bring into play the Constitutional rights of the Petitioner. This Record was before the Supreme Court of California and that Court approved the actions of the Committee of Bar Examiners when it declined to review the decision. Thus, because the Committee of Bar Examiners in declining to recommend the admission to the Bar of the Petitioner used vague language which did not disclose the findings upon which they concluded to deny Petitioner admission to the bar this very vagueness cannot be called upon to prevent the Court from looking behind the language of the Committee to the real facts as they appear in the record.

2. Any Possible Independent State Ground Asserted Herein Is Not Substantial or Sufficient.

It has been asserted that if there are independent State grounds, the Supreme Court will not take jurisdiction. The cases are very clear, however, that if the independent ground was not a substantial or sufficient one, it will be presumed that the tribunal below based its judgment on the Federal question, and this Court will then take jurisdiction.

Williams v. Kaiser, 323 U. S. 471;
Johnson v. Risk, 137 U. S. 300;
Lawrence v. State Tax Commission, 286 U. S. 276.

While it is the position of Petitioner that in this case there is no independent State ground which can be separated in any manner from the Constitutional grounds asserted by the Petitioner herein, it is also urged that where the Constitutional point raised involves the basic freedoms of speech and press, the examination of the alleged State grounds by the Court is more critical.

In *Craig v. Harney,* 331 U. S. 367, 373, the Court pointed out that:

> "In a case where it is asserted that a person has been deprived by a State Court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made." (See also, *Pennekamp v. Florida,* 328 U. S. 331, and *Milk Wagon Drivers Union of Chicago Local 753 v. Meadowmoor Dairies, Inc.,* 312 U. S. 287, 293.)

In the *Meadowmoor* case, *supra*, the Court pointed out, at page 293, that:

> "Still it is of prime importance that no Constitutional freedom, least of all the guarantee of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the State Courts where a claim of Constitutionality is effectively made."

In the present case, there was no decision by the State Supreme Court, and the basis upon which the Supreme Court of California (with three Justices voting to review) declined to review the case can only be determined by an examination of the record below. Nowhere in the record below is any matter raised upon which this decision could have been predicated except upon those matters relating to the political, social, and economic views of the Petitioner as evidenced by his written and spoken statements.

There has been some suggestion in the proceedings below that it is the position of the Respondent that it was not Petitioner's answers to the questions but rather his failure to answer certain of the questions upon which they based their decision.[12] It would appear that the Respondent argues from this point that no constitutional issue is raised. Respondent, in making this argument overlooks the nature of the questions which remained unanswered. Each such question delved into the alleged beliefs, opinions and associations of the Petitioner. Had

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[12]The specifications of the "evidence most directly relevant to the Committees' determination etc. . . ." in Respondent's Brief at page 5 ff. would throw doubt on this argument as being the true basis of the Respondent's action against the Petitioner.

the Petitioner responded to these questions, it is submitted that the Committee of Bar Examiners could not have based its denial upon the answers so given. If the answers could not properly be considered by the Committee, it is hard to understand how the failure to answer the questions could be placed in a different category.

In the light of this record, one searches in vain for a substantial state issue sufficient to defeat the jurisdiction of this Court.

VII.

SUMMARY OF ARGUMENT.

Fundamentally, Respondent justifies its conduct below upon the theory that admission to the practice of law is merely a beneficent privilege, subject to the plenary powers of the State. On this record, Respondent apparently believes that applicants for admission to the Bar may be denied relief for any reason or for no reason at all without recourse to the protective guarantees of the Federal Constitution. The notion that admission to the practice of law is no more than a privilege extinguishable at uncontrolled discretion of state officials flows from the facile generalization that there is no constitutionally-protected right to pursue the calling of a lawyer.

The real issue in this case however, is this: Has the Petitioner been deprived of his rights without due process of law and denied the equal protection of the laws?

The sole ground for denial of Petitioner's application is the allegation that he did not sustain the burden of

proving that he was a person of "good moral character" and that he had complied with the provisions of the state law barring persons who advocate the overthrow of the government "by force and violence or other unconstitutional means." California has not denied on this record that Petitioner is able to take an oath to support the Constitution. The State does not claim that Petitioner is not adequately versed in the law, that he is untrustworthy or that he could not properly represent his clients in the courts. No claim of prior malfeasance or misfeasance is made against Petitioner. It is not claimed that Petitioner was proved to have advocated the overthrow of the government in any manner, and the record here contains his disavowals and affirmative and undisputed proof of his condemnation of such advocacy. It is not claimed that any opinion or association of Petitioner's past or present offended the criminal law, nor in this record can it be disputed that Petitioner's refusal to answer certain questions concerning his opinions, beliefs and associations were based solely on conscientious objection to the questions as violative of his constitutional rights.

When California imposes political tests upon those who seek to pursue the private practice of the law it must offend the "equal protection" clause of the Fourteenth Amendment.

It is, of course, now established that the guarantees of the First Amendment are subsumed within the provisions of the Fourteenth Amendment. In this connection, it should be noted that the operational standards fixed by

the State are such vague elements as "burden of proof" and "moral character." As construed herein, these standards sweep within their ambit activities that in ordinary circumstances constitute an exercise of freedom of speech and assembly. Hence they act as an overhanging threat to free discussion and permit the punishment of the fair use of the right of free speech. Moreover, aside from questions of ambiguity, compulsion to disclose one's opinion and beliefs as a condition for exercising a fundamental liberty, offends provisions of the Bill of Rights.

Still another question which must be answered is whether Petitioner has not been deprived of his liberty without procedural due process of law. *As applied herein,* the standard of "moral character" does not appear reasonably related to professional fitness or the sound administration of justice. There is nothing in the record that reflects upon Petitioner's honor or character or his fitness for the confidence and trust which attend both the relation of attorney and client and the practice of law before the courts. His conscientious objections to intrusions into his opinions and beliefs cast no shadow on his moral character, otherwise overwhelmingly established in this record. In these senses, Petitioner did nothing which warranted exclusion from his chosen calling to protect clients, courts or the public.

The long and short of the matter is that Petitioner has been denied admission to practice law in California by a judgment in a judicial proceeding which involves a case or controversy cognizable by this Court. A Federal right secured by the First, Fifth and Fourteenth Amendments has been violated by the action of the State through its judicial arm.

VIII.
ARGUMENT.

A. The Right to Practice Law Is a Right of Liberty and Property Protected by the Fourteenth Amendment.

It should be noted at the outset that Petitioner herein commenced the study of law at the age of thirty-nine and stood ready to take the examination required by law as the primary prerequisite for admission to the Bar at the age of forty-two. He was a mature man who commenced the practice of law because of a firm conviction that he could contribute to society in this manner. He filed with the Committee of Bar Examiners all of the requisite documents stating fully and truthfully all of the facts of his life as required of all applicants who take the Bar examination. For three long years this information remained securely in the files of the Committee of Bar Examiners, awaiting the completion of his studies, before the Committee raised the question of his moral fitness. To be sure, the question was not raised after passage of the Bar examination—it was raised approximately sixteen days before the examination at the time when the studies of the law student reached a climax. At this critical time the Petitioner was called in for questioning by the Committee of Bar Examiners with regard to his "moral character" and only after intercession by counsel was Petitioner allowed to take the Bar examination before final resolution of the issue of his good moral character.

Despite the pressure of this proceeding already commenced, Petitioner passed the Bar examination and thereby fulfilled all of the educational qualifications required of other prospective admittees to the Bar.

In addition, Petitioner submitted a series of letters which are to be found in the Record of the case on pages 287 through 334. These letters are from attorneys-at-law, businessmen, medical practitioners, members of the ministry, professors at law school, social workers and other professionals and individuals. These letters testify to the good moral character of the Petitioner at every phase and stage of his mature life.

Additional letters of this type were not and are not required of the average and ordinary admittee to the Bar. Despite the wide scope of reference and the highly laudatory nature of these letters, the Committee of Bar Examiners asserts that Petitioner has not met his burden of proof.[13]

The Supreme Court in circumstances somewhat similar to the instant case has indicated that there are constitutional restrictions on the right of States to deny admission to the Bar. In the case of *In re Summers*, 325 U. S. 565, 571, the Court pointed out that:

> "Of course under our Constitutional system men could not be excluded from the practice of law, or indeed from following any other calling, simply be-

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[13]It should be noted that Petitioner offered to bring the witnesses to testify in person on his behalf before the Committee [R. 70-71] but the Committee requested that the time of the Committee could be saved by submitting letters instead [R. 70]. In view of this, it ill behooves the Committee to now suggest as it does in its "Brief In Opposition to Petition for Certiorari" (p. 10) that the "persuasiveness (of the letters) was limited since none of them were directed to, or showed any knowledge of, the specific matters causing the Committee to have doubts covering Petitioner's qualifications."

cause they belong to any of our religious groups whether Protestant, Catholic, Quaker or Jewish. ."[14]

While in the *Summers* case the Court did not require admission to the Bar, nevertheless the very granting of the Writ of Certiorari in that case and the examination of the case on its merits was a recognition that the right to admission was a Constitutionally-protected right and not a mere privilege.[15]

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[14]The possibility of a state denying admission to the bar for reasons which today would jar the sensibilities and the mores of our time is verified in *In re Goodell*, 39 Wis. 232, where admission to the bar was refused to a woman solely on the basis of her sex.

[15]A striking response to the contention that the particular matter sought for is not a right but merely a privilege is to be found in a 1955 Wisconsin case dealing with a community placing restrictions on tenancy in government-owned housing projects. In *Lawson v. Housing Authority of City of Milwaukee*, 270 Wis. 269, 70 N. W. 2d 605, the Supreme Court of Wisconsin held:

> "If the state, or one of its political subdivisions, were to pass a criminal statute or ordinance making it unlawful for a person to belong to any organization advocating political or economic change or reform, such enactment would at once be held unconstitutional as violative of the liberties of citizens guaranteed by the First and Fourteenth Amendments of the United States Constitution. The holding out of a privilege to citizens by an agency of government upon condition of non-membership in certain organizations is a more subtle way of encroaching upon constitutionally protected liberties than a direct criminal statute, but it may be equally violative of the Constitution. Surely a citizen, to whom such a privilege is denied on the sole basis of membership in some organization, should be accorded the right to test the constitutionality of such regulation in Court. If a precedent should be established, that a governmental agency whose regulation is attacked by court action can successfully defend such action on the ground that the plaintiff is being deprived thereby only of a privilege, and not of a vested right, there is extreme danger that the liberties of any minority group in our population, large or small, might be swept away without the power of the courts to afford any protection."

See also, *Chicago Housing Authority v. Blackman*, 4 Ill. 2d 319, 122 N. E. 2d 522, to the same effect.

In *Cummings v. Missouri*, 71 U. S. 277, at 321, 322, and *Ex parte Garland*, 71 U. S. 333, at 378, 379, the Court further indicated that the right to practice law is encompassed within the "certain inalienable rights to life, liberty and the pursuit of happiness" which lie at the root of our political institutions.

A similar result has been reached in cases dealing with other professions.

In *Dent v. West Virginia*, 129 U. S. 114, dealing with the right to practice medicine, the Court held that

> "it is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to everyone on like conditions."

Similarly in *Allgeyer v. Louisiana*, 165 U. S. 578, 589, the Court said:

> "The liberty mentioned in that amendment . . . is deemed to embrace the right of the citizen to be free in the enjoyment of all of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation . . ."

It is well established that the courts will protect the right of individuals to engage in a lawful calling or profession in the face of infringements claimed to violate the due process clause of the Fourteenth Amendment, even though in many of these cases the callings are not

of the stature of the practice of law. (See *Yick Wo v. Hopkins,* 118 U. S. 356 (operation of a laundry); *Mayflower Farms v. Ten Eyck,* 297 U. S. 266 (price fixing of milk); *Smith v. Texas,* 233 U. S. 630 (railway brakeman); *Liggett v. Baldridge,* 278 U. S. 105 (pharmacy); *Missouri ex rel. Hurwitz v. North,* 271 U. S. 40 (medicine); *Semler v. Oregon State Board of Dental Examiners,* 294 U. S. 608 (dentistry).)

Nevertheless, conceding for purposes of argument only, that being admitted to the practice of law is a privilege, the cases are legion establishing that this privilege may not be granted or withheld on conditions which violate constitutional rights or require the surrender of constitutional rights.

This doctrine was clearly stated in *Frost & Frost Trucking Company v. Railroad Commission of California,* 271 U. S. 583, at 593:

> "It would be a palpable incongruity to strike down an act of state legislation which, by words of expressed divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold."

The significance of the *Frost* case to our case at bar is that in effect, the State Bar is saying to prospective admittees, and in particular to Konigsberg, that the privilege of practicing law will be granted only upon condition that the admittee establishes that he does not and has not held views of a political, social or economic nature contrary to some vague standard existing only in the minds

of the members of the Committee of Bar Examiners. In the case of Konigsberg this becomes an *ex post facto* application in that he was informed of this undefined standard only at the very moment when he was at the threshold of the Bar after having completed all other requirements of both a moral and an educational nature. To other admittees who may follow in the knowledge of the ruling in the Konigsberg case it says that prospective lawyers must take care not to hold any unusual political views for fear that when the time comes for the state to grant to them the "privilege" of practicing law, it may be withheld by reason of their past political, economic or social views.

It is submitted that the practice of law is a right, but even deeming it a privilege, the state may not restrict the exercise in a vague or arbitrary manner. (See also, *Near v. Minnesota*, 283 U. S. 697; 720; and *Hannegan v. Esquire, Inc.*, 327 U. S. 146, 155.)

B. When Concepts Such as "Good Moral Character" Are Interpreted to Include Within Them Political Beliefs, Opinions and Associations, They Violate Petitioner's Rights Under the First and Fourteenth Amendments.

Petitioner concedes the propriety of examining the good character of the prospective admittee to the Bar. Petitioner does assert, however, that good moral character has had a traditional and generally identifiable meaning by which it has been interpreted in the courts of the State of California and elsewhere in the past.

It is perfectly proper to determine that a prospective lawyer shall be honest, truthful, trustworthy and maintain integrity in his relations with his fellowmen. These

are qualities which have been established in numerous decisions in the Supreme Court of the State of California, but never prior to this case had the Committee of Bar Examiners denied admission to the Bar of a prospective admittee by reason of his alleged political, social or economic writings or expressions of opinion.[16]

Scholars have long sought for some definitions of moral character which will help to inform applicants to the Bar or neophyte students of these qualifications at an early stage. Thus, as was stated in a recent article in the Detroit Law Journal:

> "We have been searching for some basic information on the establishment of good moral character. We find precious little which is of any practical use to either applicants or character and fitness committees." ("Considerations on Determination of Good Moral Character" by John R. Starrs, 18 Univ. of Detroit L. J. 195 (1955).)

It has been suggested by some that the basis for determining good moral character is to examine the current moral norms and mores of society. Such a basis may be satisfactory so long as we remain in the true area of personal morality insofar as it relates to the practice of law. But when we move beyond the human characteristics of basic honesty, integrity, and ethics, in establishing the good morality required by society of the prospective lawyer, we allow a small group of Bar examiners, acting for and on

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[16]While the Konigsberg case was pending before the Supreme Court of California, the case of *Brooks v. The State Bar* was denied review by the Supreme Court of California, with three justices voting for a review. (October 6, 1954.) The *Brooks* case also dealt with certain political issues but was not on all fours with this case.

behalf of the State, to arbitrarily impose their personal mores and their personal concepts of right and wrong in the political area as standards of "good moral character." We thus predicate good moral character not on the personal character of the applicant to the Bar, but upon his political beliefs and opinions and, as the next step, the characteristics of a group in whose activities he is accused of participating. The applicant for admission to the Bar is thus required to adhere to (and for that matter to have adhered to at all times during his life) vague standards of political morality in periods of changing moralities; and we may deny admission to the bar for past adherence to beliefs towards which public attitudes have altered since the beliefs were held. We ask in effect that the applicant resist from holding or expounding social, economic or political views which differ from those held by the majority of the community for fear that at some time in the future these views may become sufficiently repugnant to a large enough portion of the community (or small and vocal portion of the community) to justify a Committee of Bar Examiners in stating that he is therefore not morally fitted for the practice of the law.

This determination in the arena of opinions, beliefs, and ideas can only be an arbitrary determination by the group which happens to wield authority as the Committee of Bar Examiners at any particular time; and while this arbitrary determination may seem to conform to the views of a large number of persons or even to the vast majority of persons in the community, it does not conform to the requirements

of the First Amendment as incorporated in due process clause of the Fourteenth Amendment.[17]

Mr. Justice Jackson, considering a related problem in the case of *Jordan v. George*, 341 U. S. 223, 242, pointed out the dangers inherent in the doctrine adopted by the Committee of Bar Examiners:

> "We usually end up by condemning all that we personally disapprove and for no better reason than that we disapprove it. In fact what better ground is there? Uniformity and equal protection of the laws can come only from a statutory definition of fairly stable and confined bounds."

The author of the Detroit Law Review article *(supra)* points again to the inherent danger in applying standards such as this to the practice of law. He states that:

> "But if we say that good man must be a law abiding traditionalist, do we mean that there must be uniformity of mind? If so how much? Is that uniformity which comes from adjustment of the individual to the group in which he lives a prerequisite to being good? Is it a prerequisite to being a lawyer? If complete adjustment should be reached, would we

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[17]An unsigned article in 54 Northwestern University Law Review 94 (1955), points out that "serious administrative difficulties arise in deciding where to draw the line in cases where it is attempted to deny a candidate admission to the Bar on the basis of political thoughts or affiliations or because of a refusal to answer political inquiries. It is difficult to see how such elusive concepts as disloyal or doubtful loyalty can be used as a basis for denying admittance to the Bar."

not be well on the road to the Orwellian state so terrifyingly described in 1894."[18]

Yet when the Committee of Bar Examiners sets up as a standard and determines that a group of articles written by the Petitioner in publications legally and regularly published in a large community in the State, or that statements made before a Congressional Committee,[19] or that alleged adherence to a political party many years before[20] indicate that an applicant is not a person of good moral character, are we not relegating to the Committee of Bar Examiners the right to proscribe what is proper and

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[18]The same article points out that:

"We are accustomed to think of the signers of the Declaration of Independence as patriots; the British Government under George III had other ideas, and unquestionably the signers were not law-abiding so far as the British were concerned. Certainly in a narrow sense they were not traditionalists. Yet who today will say that they were not good men and for the matter of that, who today will say that the law abiding loyalists of the time were not good men also. . . . Who says we can settle these things by majority vote." (Detroit Law Review, *supra.*)

[19]Of the Tenney Committee, Edward L. Barrett, Jr., Professor of Law at the University of California wrote: "On the whole, it appears that the hearings of the Tenney Committee were not conducted in a manner calculated to permit rational findings of fact. A general view suggests that persecution rather than investigation was the theme." (The Tenney Committee, Cornell University Press, Ithaca, p. 44.)

[20]With complete abondon and without regard to the introduction of evidence, the Committee of Bar Examiners arbitrarily and capriciously damns the articles written by Petitioner as "consistently following the Cmmunist Party line." That the Committee places its major emphasis on its own interpretation of these articles is clearly indicated by the suggestion that "Respondents hope that members of this Court will have a chance to examine the articles themselves . . ." and then proceed to quote extensively from the articles. (See Respondent's Brief in Opposition to Petition of Certiorari pp. 5-8.)

orthodox in thought and deed? Are we not allowing the Committee to determine what is morally acceptable and what is not morally acceptable?[21] (See *West Virginia State Board of Education v. Barnette,* 319 U. S. 624.)

The bounds within which Committees of Bar Examiners may operate has never been strictly defined. However, in *Ex parte Secombe,* 60 U. S. 913, Chief Justice Taney pointed out that:

> "And it has been well-settled by the rules and practice of common law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney, and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice or personal hostility, but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion whereby the *rights and independence of the Bar may be as scrupulously guarded* and maintained by the court, as the rights and dignity of the court itself." (Emphasis added.)

One may ask in vain for the relationship between the political views of an applicant and his qualifications to practice law. We are not dealing here with an employee of a governmental body who deals with secret information

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[21] Another dangerous aspect of allowing political tests to make any inroad into any phase of the legal profession is illustrated by an item appearing in the New York Times on July 31, 1956:

> "Confirmation of Judge Bigelow (as member of the Board of Governors of Rutgers University) was denied last night solely because as a lawyer he represented a teacher who invoked the Fifth Amendment while testifying before the House Committee on Un-American Activities." (P. 1.)

vital to the security of the nation. (*Cole v. Young,* 351 U. S. 536.) We are dealing here with a free and independent profession, a profession predicated on the principle that all who need may find lawyers fearlessly prepared to defend the right of every citizen in the nation.

If we commence by restricting for political reasons the very practice of law, we will have destroyed at the foundation this basic principle of American life. Reasonable restrictions on education—Yes. Reasonable restrictions against dishonesty—Yes. But only restrictions which bear a reasonable relationship to the ends sought to be attained—the preservation of high standards of ethics and integrity in the legal profession.

Certainly the Court would strike down as violative of Constitutional rights a restriction which in a state said that no Negro could practice law; or that no person who was a member of the National Association for the Advancement of Colored People or the Urban League could practice law, or that persons who supported the integration decision of the Supreme Court were not of good moral character. Such restrictions would be held to deny equal protection and would be held violative of due process under the First and Fourteenth Amendments. Yet the qualification established here by the California Committee of Bar Examiners is in its essentials in no way different. Clearly, the application of the State Bar Act of California and the interpretation of good moral character as applied by the Committee of Bar Examiners in this case is unconstitutional. (See *Lawton v. Steele,* 152 U. S. 133; *Smith v. Texas,* 233 U. S. 630; *Meyer v. State of Nebraska,* 262 U. S. 390; *Korematsu v. United States,* 323 U. S. 214; *Missouri ex rel. Gaines v. Canada,* 305 U. S. 337; *Chaires v. City of Atlanta,* 164 Ga. 755.)

C. The Denial to the Petitioner of the Right to Practice Law Although Otherwise Qualified Because of Newspaper Articles Written by Him and His Views Otherwise Expressed Constituted a Denial of Due Process and the Equal Protection of the Law.

The act of the Committee of Bar Examiners in applying political tests determining whether Petitioner was of good moral character constitutes an act of the Committee with the full force of State legislation and therefore within the protection of the Fourteenth Amendment.

In *Smith v. Texas,* 233 U. S. 630, at 636, the Court pointed out that:

> "Life, Liberty, property and the equal protection of the law grouped together in the Constitution are so related that the deprivation of any one of these separate and independent rights may lessen or extinguish the value of the other three. Insofar as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords to those who are permitted to work."

It is not many years since the court in *Ex rel. Gaines v. Canada,* 305 U. S. 397, insisted that a state did not have the right to deny a Negro the right to attend a law school in order to acquire the skills and learning to practice a profession of his own choosing. Certainly implicit in the more recent decisions involving the school segregation cases (*Brown et al. v. Board of Education of Topeka,* 347 U. S. 483) was the principle that by the denial of the equal right to attend non-segregated schools, Negro children were denied the equal right to qualify themselves for such professions or callings as they saw fit.

But the principle that it is a denial of equal protection of the laws to exclude a person from a state law school because he is a Negro protects the right to practice law at only the first stage. It would indeed be a hollow victory if the Constitution enabled a man to fit himself to become a lawyer by insisting on his equal right to attend a law school if, having acquired the necessary legal knowledge and passed all of the other qualifications for the practice of law, it becomes possible to deny him the right to practice law by arbitrary and unequal application of the law relating to qualifications for admission to the Bar. Obviously, the right to acquire an education and to go to school must go side by side with the right to practice a chosen profession after having fitted and qualified oneself for that profession. In the Konigsberg case, the applicant filed his notice to the Committee of Bar Examiners fully three years before he asked for permission to take the examination. True, he was allowed without discrimination to attend law school; but, having completed his studies and met all of the other qualifications of the Committee of Bar Examiners, he was entitled without discrimination to become a member of the Bar and practice the profession of his choosing.

An Ohio Court faced with a not dissimilar situation approached the problem with a perspective which is commendable and which more properly respects the Constitutional limitations on the right to restrict the practice of law. In the case of *In re Burch*, 73 Ohio App. Rep. 97, 54 N. E. 2d 803, the State of Ohio endeavored to disbar one Frank Burch as being guilty of misconduct and unprofessional conduct by reason of the fact that he had failed to register as an agent of the German government

and conducted propaganda on behalf of that foreign government. The Court concluded that:

> "No law forbade what he did. The only wrong charged against him was that by reason of his relations with the German Consul he should have registered. Had he done that no act of his was of such character as could not have been lawfully performed by any American citizen.
>
> "Such failure to register had in it no element of moral turpitude." (At p. 103.)

One of the concurring judges in the *Burch* case pointed out further that:

> "It must be at all times remembered that the right of free speech is a guarantee embodied in the Constitution of the United States and while this writer vigorously dissents from some of Mr. Burch's political views and activities as revealed by the record, nevertheless his right to express his views must be respected by the court so long as his activities do not contravene the laws of the state and nation. The record does not reveal any such contravention." (At pp. 106-107.)

In the *Burch* case it was obvious that the effort to disbar Burch was based upon the fact that he contravened the political mores of the period by supporting the German Government and acting as its agent.[22] In the con-

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[22]Another concurring judge wrote:

> "Mr. Burch unquestionably had a constitutional right to try to influence public sentiment against war, and to do each and everything which the record shows he did do. . . . The propriety of (his) doing so is a matter of opinion and is not a violation of law nor a matter for which he could be called to account in a disbarment proceeding." (Pp. 105-106.)

text of the time, this was a heinous offense against the political morality of the community. Similar efforts were made to disbar persons of I. W. W. persuasion and Socialists in the period of World War I,[23] but in the sober second thought of history, we have looked back and recognized that we were simply submitting to the hysteria of the time and that the basic concepts of morality which stand the tests of time as the proper tests for admission to the bar, were not properly applied in these political cases and that our basic constitutional principles were seriously bruised from the impact.

The Court herein is not called upon to determine that local Committees of Bar Examiners are not empowered to thoroughly examine the fitness and morality of Petitioners who seek admission to the Bar. We are simply called upon here to determine that when California interpreted its requirement of good morality in such a manner as to exclude Petitioner, not by reason of traits of character directly related to the practice of law, but rather based upon his political opinions, beliefs and associations, it was setting up a standard which violated due process of law and denied Petitioner the equal protection of the law.

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[23]See *In re Clifton*, 33 Idaho 614, 196 Pac. 670 (1921); *In re Arctander*, 110 Wash. 296, 188 Pac. 380 (1920). See also Zachariah Chafee, Jr., *Free Speech in the United States* for a full discussion of this period and other periods in which the American people have given way to hysteria in their application of political tests to constitutionally protected areas of freedom of speech and press. (Chafee, Harvard University Press, Cambridge, 5th printing, 1946.)

D. The Procedures Adopted by the Committee of Bar Examiners Constituted a Denial of Due Process.

Petitioner here is not concerned with the factual interpretation of the statutes involved, since this is a matter for the State of California. We are concerned only with the question of whether the statutes, as applied by the Committee of Bar Examiners and approved by the Supreme Court of California (by failure to review the decision of the Committee of Bar Examiners) and as related to the Petitioner herein, violate the Fourteenth Amendment.

The very rules of the Committee of Bar Examiners restrict the Committee or Subcommittees of the Committee of Bar Examiners to the taking of "relevant evidence." The Committee is given a wide latitude in the area of investigation in that it is not to be bound by the hearsay rule or other technical rules of evidence. But the Committee is bound by a rule which states "but an applicant shall be advised of any and all information received by the committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based. . . ." An examination of the record in the instant case shows that the Committee violated its own rules and has placed the Petitioner herein in the position before this Court of guessing as to the basis of the denial of rights, or assuming (as the Petitioner of necessity does throughout this brief) that the questions asked present the sole basis for this denial. (This assumption is supported by Respondent's Brief filed prior to granting of certiorari.)

The rules of the Committee itself call for informing the Petitioner of all information adversely bearing on his

moral character; yet the record shows that the denial by the Committee in this case was predicated only on two vague grounds—that the Petitioner had failed to meet his burden of proof that (1) he was of good moral character and (2) he did not believe in the overthrow of the Government by force and violence. At no time was he informed wherein he had failed to meet his burden of proof nor was he informed in what particulars he might meet this burden of proof.

Petitioner was asked hundreds of questions in the course of the proceedings. At no time was he informed which were the basic questions which must be answered in order to qualify; at no time was he informed which were preliminary questions; at no time was he ever informed that if he failed to answer a specific question he could not be admitted to the Bar. Lacking this information, Petitioner was required to assume the impossible burden of violating his personal principles and accepting a violation of his constitutional rights or submitting to arbitrary requirements of the Committee the full import of which was never made clear to him.

The Petitioner established his opposition to the doctrine of force and violence by his own testimony; his record in the community as a civic leader, and even in the newspaper articles introduced by the Respondents. [See R. 173.] Having established these facts, what further could the Petitioner bring forward to the Committee to meet his burden of proof that he did not believe in force and violence? The Committee never indicated at any time what it expected of him; it presented no evidence to show any possible action in the entire lifetime of the Petitioner indicating a belief in the overthrow of the Government by force and violence; it brought no witnesses before the

Committee testifying as to any such belief on the part of Petitioner; and yet it ends the hearings with a single paragraph statement that he has failed to meet his burden of proof.

It is submitted that in applying the requirement of burden of proof on the Petitioner in this manner, the Committee has been arbitrary and has applied its rules and procedures in such a manner as to deny the Petitioner his constitutional rights under the Fourteenth Amendment.

E. Petitioner Was Denied Due Process of Law When the Committee of Bar Examiners Retroactively Established Political Tests for Admission to the Bar.

It has already been noted that while there are numerous cases in the State of California wherein applicants for admission to the Bar have been denied admission and have sought review before the Supreme Court of California, in no single one of the reported cases was the Petitioner denied admission to the Bar by reason of his political views. Thus in *In re Garland,* 219 Cal. 661, 28 P. 2d 354, the applicant had been convicted of forgery prior to his application; in *In re Hovey,* 7 Cal. Unrep. 203, 81 Pac. 1019, the applicant had failed to disclose that disbarment proceedings had been instituted against him in the state of his former domicile and that disbarment proceeding involved an element of criminality; in *In re Wells,* 174 Cal. 467, 163 Pac. 657, the applicant had obtained a loan by falsely misstating material facts and then committed a fraud upon the court in a prior proceeding; in *Spear v. State Bar of California,* 211 Cal. 183, 294 Pac. 697, the applicant failed to disclose criminal charges preferred against him and had thereby made false statements on the affidavits accompanying his appli-

cation for the right to practice law in California. In these and in numerous other cases, the Supreme Court of California had consistently stated that the Committee of Bar Examiners could properly deny admission to the Bar to prospective applicants on the basis of their failure to establish good moral character where the applicant had previously been convicted of a crime, acts involving moral turpitude or had committed a fraud upon the Committee, but in no single case had the Committee of Bar Examiners ever denied a person admission by reason of his political opinions, writings, or associations, or his economic or social views, or his attitude towards committees of Congress..

This interpretation of the meaning of good moral character had long been established therefore in the laws of the State of California. No new legislation was passed prior to or subsequent to the commencement of the study of law by this Petitioner.[24]

This Petitioner was therefore entitled to assume that the Committee of Bar Examiners would not impose any political tests in violation of the First, Fifth or Fourteenth Amendments of the Constitution of the United States subsequent to the commencement of his study of law. He put in three full years in the study of law in the State of California and passed his Bar examination. Only at that time, and for the first time, was he informed by

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[24]As a matter of fact legislation proposing a special loyalty oath for lawyers was proposed by a committee of the Board of Governors of the State Bar in 1955. This proposal was thoroughly discussed by the lawyers of the State in open hearings in Los Angeles and San Francisco. (February and March, 1955.) Thereafter, a greatly restricted proposal was introduced in the State legislature and failed of passage.

the Committee of Bar Examiners (if indeed he was informed at all any time) that political tests were now being instituted in the State of California as a prerequisite for the practice of law.

It is submitted that to place this new interpretation upon the meaning of good moral character within the statutes setting up the Committee of Bar Examiners in the State of California was a denial of the right to due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States insofar as it was applied by the Committee of Bar Examiners to this Petitioner.

IX.

CONCLUSION.

The judgment should be reversed and upon the record Petitioner be adjudged entitled to admission to the Bar of the State of California.

Respectfully submitted,

EDWARD MOSK,
Attorney for Petitioner.

SAMUEL ROSENWEIN,
Of Counsel.

Dated: October 15, 1956.

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IN THE

Supreme Court of the United States

October Term, 1956
No. 5.

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITIONER'S REPLY BRIEF.

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SUBJECT INDEX

PAGE

I.

Statement of material facts 1

II.

Jurisdictional points 2

A. Petitioner properly raised constitutional questions at every stage of proceedings including the briefs before the California Supreme Court 2

B. The determination of the Supreme Court of California was necessarily based upon a rejection of claims arising under the fourteenth amendment 7

1. The only evidence presented against petitioner relates to his alleged associations and writings thus making it necessary for the court below to determine the constitutional issues adversely to petitioner in order to uphold the State Bar 7

2. The court below was required to evaluate the constitutional significance of the newspaper writings of petitioner 9

3. The fact that no decision was written below does not detract from necessary conclusion that California court considered the constitutional questions 12

III.

Reply argument 13

A. Introduction 13

B. The denial violated petitioner's rights under the first amendment 14

1. The First Amendment does not permit the State Bar to select its members by establishing political tests as its criteria for judging prospective members of the Bar 14

PAGE

2. The sanctity of the First Amendment is of even greater importance in this case because of our societal requirement of a free and independent Bar.... 16

3. The respondent equates its subjective disagreement with the contents of articles with evidence of bad moral character 22

4. The standard erected by respondents is an abridgement of freedom of speech, of the press, and the right to petition the government for a redress of grievances 24

C. Petitioner was denied due process of law contrary to the Fourteenth Amendment by arbitrary and unreasonable administration below of burden of proof in a manner violating individual rights and the security of personal conscience of petitioner..... 27

TABLE OF AUTHORITIES CITED

CASES	PAGE
A. C. A. v. Douds, 339 U. S. 382	34
Adler v. Board of Education, 342 U. S. 485	16
American Communications Association v. Douds, 339 U. S. 382	16
Black v. Cutter Laboratories, 351 U. S. 292	16
Bridges v. Wixon, 326 U. S. 135	34
Coleman v. Watts, 81 So. 2d 650	28
De Jonge v. Oregon, 229 U. S. 353	15, 34
Garner v. Board of Public Works of Los Angeles, 341 U. S. 716	16
Gerende v. Board of Supervisors, 341 U. S. 56	16
Hebert v. Louisiana, 272 U. S. 312	15
Near v. Minnesota, 283 U. S. 697	21, 26
Orloff v. Willoughby, 345 U. S. 83	16
Patterson v. Colorado, 205 U. S. 454	21
People of State of New York ex rel. Bryant v. Zimmerman, et al., 278 U. S. 63, 49 S. Ct. 61	5
Schneiderman v. United States, 320 U. S. 118	34
St. Louis Iron Mountain & Southern Railway Co. v. Starbird, 343 U. S. 592, 37 S. Ct. 462	5
Steinmetz v. California State Board of Education, 44 Cal. 2d 816; cert. den., 351 U. S. 915	16
United States v. Dennis, 341 U. S. 494	34, 35
Whitney v. California, 274 U. S. 357	16
Wieman v. Updegraff, 344 U. S. 183	34

RULES	
Rules on Appeal of the California Supreme Court, Rule 59(b)	3
Rules Regulating Admission to Practice Law in California, Rule X, Sec. 101	10

Statutes

PAGE

California Business and Professions Code, Sec. 6001 26

California Business and Professions Code, Sec. 6064.1 8

United States Constitution, First Amendment 4, 6, 9, 13, 14, 24, 27, 28

United States Constitution, Fifth Amendment 4

United States Constitution, Fourteenth Amendment 4, 6, 13, 14, 15, 24

Textbooks

Madison's Memorial and Remonstrance, 330 U. S. 63 36

Mason, Brandies, A Free Man's Life (Viking Press, N. Y., 1946), p. 469 20

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Mason, Harlan Fiske Stone (Viking Press, N. Y., 1956) p. 95.. 18

Mason, Harlan Fiske Stone (Viking Press, N. Y., 1956), p. 381 17

50 Northwestern University Law Review (1955), pp. 94, 103.... 21

Striker, For the Defense (Doubleday & Co., N. Y., 1947) 17

Swisher, Roger B. Taney (McMillan, N. Y., 1935), p. 312 19

65 Yale Law Journal (May, 1956), pp. 879-880 24

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Respondents.

PETITIONER'S REPLY BRIEF.

I.

Statement of Material Facts.

Respondent has set forth in its statement of material facts isolated portions of articles written by Petitioner in The California Eagle. Each of the articles contains commentaries on the political, economic and social events of the day. Respondent, however, fails to call to the attention of the Court the one article written directly to the issue which Respondent calls "the area of doubt".

This is an article titled "Force and Violence". [R. 172-174.] It was written before the issues in this proceeding arose and cannot under any circumstances be deemed to be self-serving.

In this article [R. 173], Petitioner said:

> "It is vehemently asserted that advocacy of force and violence is a danger to the American Government and that its proponents should be punished. With this I agree. Such advocacy is unAmerican and does undermine our democratic processes. Those who preach it must be punished."

Thus Petitioner's personal declaration under oath that "I can say very definitely I did not, I don't; I never would advocate the overthrow of the government by force or violence clearly and unequivocally . . ." [R. 29], is reenforced by his written expressions from the very sources introduced by Respondent against him.

II.

Jurisdictional Points.

A. Petitioner Properly Raised Constitutional Questions at Every Stage of Proceedings Including the Briefs Before the California Supreme Court.

Respondent suggests that Petitioner failed to assert his constitutional grounds adequately and/or with sufficient frequency in his brief before the California Supreme Court. [R. 18-24.][1]

While the basic legal principles asserted by Respondent may be correct, the facts in this case do not fall within the purview of the law advanced by Respondent.

First of all, the cases cited by Respondent are almost exclusively cases dealing with appellate problems and appellate procedures. It is true that the California Supreme

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[1]We shall not repeat here the detailed analysis of the Record and briefs relating to this point appearing in Petitioner's Opening Brief, pages 18-22.

Court is primarily a court of appellate jurisdiction; however, in the instant case, the matter came before the Supreme Court of California not on the basis of *appellate* jurisdiction but on the basis of *original* jurisdiction.

Rule 59(b) of the Rules on Appeal of the California Supreme Court (Pet. Op. Br. p. 6) points out that where a Petitioner seeks to review any action of the Committee of Bar Examiners, he must file a petition in the Supreme Court. The petition "shall be verified, shall specify the grounds relied on and shall be accompanied by Petitioner's brief and proof of service on the Board of Governors. . . ." In the instant case, Petitioner filed the jurisdictional document required by Rule 59(b)—the Petition—and this document is set forth in full on pages 1 to 4 of the Transcript of Record before this Court.

This jurisdictional document specifically enumerates the constitutional grounds relied on by the Petitioner. These grounds include:

> "9. That the denial of the application of the Petitioner violates the rights of Petitioner under the First Amendment to the Constitution of the United States.
>
> "10. That the denial of the application violates the Fifth Amendment to the Constitution of the United States in that it deprives Petitioner of liberty or property without due process of law.
>
> "11. That said denial violates the Fourteenth Amendment to the Constitution in that it is an attempt by the State of California to deprive Petitioner of liberty or property without due process of law and denied Petitioner the equal protection of the law."

Thus, Petitioner specified the constitutional basis for his request for review in setting the issues before the Cali-

fornia Supreme Court. In this Petition for Review, Petitioner simply *reiterated* the grounds asserted on innumerable occasions before the Committee of Bar Examiners at the several hearings before that Committee. [R. 30, 31, 33, 34, 35, 72, 76, 77, 80, 100, 103, 104, 109, 111, 113, 115, 117, 118, 120, 122, 126, 127.]

The Respondent filed an answer to this petition and denied generally and specifically the allegations in the paragraphs quoted above. (See Resp. Ans. p. 7.) By denying these grounds, Respondent *framed the issues* presented to the Supreme Court of the State of California. The issues thus framed clearly included the deprivation of the constitutional rights of the Petitioner under the First, Fifth and Fourtenth Amendments.

Thus Petitioner in the basic jurisdictional document before the Supreme Court of the State of California asserted the constitutional rights which he contended had been violated at the hearings below. These are basically the same constitutional points raised before this Court.

Now it is apparently asserted by the Respondent that because Petitioner did not thereafter cite the Constitution with regard to each and every point argued in his brief accompanying the Petition for Review[2], he has in some manner failed to preserve his rights.

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[2]Petitioner responds to argument by Respondent regarding the briefs below even though informed by the clerk of this Court that the briefs of parties in the Court below are not properly a part of the record.

This Court has frequently pointed out that no particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the State court with fair precision and in due time. (*People of State of New York Ex Rel. Bryant v. Zimmerman, et al.*, 278 U. S. 63, 49 S. Ct. 61; *St. Louis Iron Mountain & Southern Railway Co. v. Starbird*, 343 U. S. 592, 37 S. Ct. 462.)

It is thus the firm position of Petitioner that the constitutional contentions of the Petitioner were properly raised and protected by the specifications in the Petition alone; nevertheless, Respondent errs in contending that the Petitioner did not thereafter make adequate constitutional references in the brief which accompanied the petition.

It should be noted first that on pages 10, 11, 12, 13, 14, 15 and 16 of the brief filed by the Petitioner before the California Supreme Court, it was pointed out frequently and repeatedly that "applicant declined to answer questions, primarily on the ground that it was an invasion of his constitutional rights encompassed in the First Amendment to the Constitution" and that "it invaded the area of beliefs and opinions" and that "the Committee is not empowered to inquire into his personal beliefs or ideas in the political realm" and that "it was a violation of his rights under the First Amendment." Thus, repeatedly it was called to the attention of the Supreme Court of the State of California that the entire fundamental bottom position of the Petitioner was reliance upon the Bill of Rights of the Constitution. It is

impossible for one to read through these pages of Petitioner's Brief without having a full and clear understanding and recognition of the constitutional basis of the position asserted by the Petitioner.[3]

Then on pages 27 and 29 of his brief, Petitioner points out that the position of the State Bar in denying him the right to practice law, predicated on his alleged political beliefs or affiliations, was improper and thus clearly urged the same First and Fourteenth Amendment position to which he had referred earlier. Again on pages 30 and 33, the Petitioner refers to the dangers involved in establishing political tests for admission to the Bar. The point as argued here is identical with the point raised in the briefs before this Court. The argument in this brief clearly indicated to the Court that the fundamental error below had been the consideration of the political association and writings of Petitioner and that this was the basis upon which Petitioner was asking the Supreme Court of California to review the findings below. Sim-

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[3]It should be noted that in addition to the numerous references in Petitioner's brief, Respondents were fully cognizant of the constitutional issue before the State Supreme Court and made numerous references in its own brief to the assertion by Petitioner of his constitutional rights. Thus, on page 15 of Respondent's brief before the Supreme Court of California, Respondents stated that: "Throughout the hearings Petitioner urged a privilege under the First Amendment protecting him from committee questions concerning his associations and beliefs", and on page 34: "Petitioner, on the other hand, repeatedly urged a First Amendment privilege . . .", and finally in its *conclusion*, Respondents showed the importance of the constitutional questions by asserting on page 45 that: "In addition, Respondent has shown that its questions were proper, *that Petitioner had no constitutional privilege justifying his refusal to answer* and that an unfavorable inference was properly drawn from his silence . . ." (emphasis added). In view of these references, it would seem improper for Respondent to now suggest that the constitutional questions were not at all times before the Supreme Court of the State of California.

ilarly, the references on pages 37 and 40 clearly raise the entire issue of the lack of due process accorded the petitioner below.[4]

Thus it cannot be said that Petitioner failed to assert his constitutional grounds in his brief before the State Supreme Court.[5]

B. The Determination of the Supreme Court of California Was Necessarily Based Upon a Rejection of Claims Arising Under the Fourteenth Amendment.

1. THE ONLY EVIDENCE PRESENTED AGAINST PETITIONER RELATES TO HIS ALLEGED ASSOCIATIONS AND WRITINGS THUS MAKING IT NECESSARY FOR THE COURT BELOW TO DETERMINE THE CONSTITUTIONAL ISSUES ADVERSELY TO PETITIONER IN ORDER TO UPHOLD THE STATE BAR.

Respondent asserts that this Court's jurisdiction cannot be founded upon a mere surmise that the State Court's decision turned upon a federal question. Petitioner has no quarrel with the cases cited by Respondent in support of this point.

Petitioner disagrees, however, with Respondent's contention that he has failed to establish that the decision

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[4]Respondent argues that this could refer to the due process clause of the Constitution of California, rather than the due process clause of the Federal Constitution. This argument, however, must fail in view of the fact that the only reference to due process in direct language is found in paragraphs 10 and 11 of subsection (8) of the Petition for Review, and this reference is to the due process clause of the Federal Constitution and not of the State Constitution.

[5]See also Petitioners Reply brief before the California Supreme Court pages 3, 4, 5, 11, 13, and 16 where petitioner again sets the frame in which the State Court should consider this case as the right of the State to restrict membership in the State Bar by reason of beliefs, political writings, and associations.

of the Supreme Court was necessarily based upon a rejection of the claims arising under the Federal Constitution.

In support of its position, Respondent lists four points which Petitioner argued before the California Supreme Court. (Resp. Br. p. 28.)[6]

It cannot be assumed that these four points even as phrased were non-Federal grounds for the State Court decision; for, as we have pointed out elsewhere in this brief and in our opening brief, the State Court could not even begin to consider such matters as "Burden of Proof" or "force and violence," or "good moral character" as interpreted by Respondent, without examining the nature of the evidence submitted on these issues; the evidence relating to the associations of the Petitioner, the writings of the Petitioner,[7] and the public statements of the Petitioner.

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[6]1. Applicant sustained his burden of proving good moral character.

2. The burden of proof under Business and Professions Code Section 6064.1 falls upon the Committee of Bar Examiners not on the applicant.

3. If the burden of proof under Section 6064.1 is on the applicant, petitioner's evidence outweighed that of the Committee so that he sustained the burden of proof.

4. The Committee erred under its own rules by not advising petitioner of the evidence against him.

[7]It should be noted that while the Respondent alternately disclaims need to use these articles as a basis for its decision and then insists that they form a major basis for that decision—in its Answer to the Petition for Review in the Supreme Court of California, Respondent stated (p. 5):

> "Since these Exhibits (referring to the articles in the California Eagle, the testimony before the Tenney Committee and Bar registration forms) formed an integral part of the hearings and were given due consideration by the Committee in arriving at its decision, they are necessary to a complete consideration of this appeal."

This type of evidence was the sole evidence presented against the Petitioner in the hearings before the State Bar. If the testimony of the alleged associations of the Petitioner, the articles written by the Petitioner, and the testimony of the Petitioner before the Tenney Committee were to be eliminated from the record, there would be nothing in the record other than testimony attesting to the impeccable character of the Petitioner and his exemplary record of employment within the community and his lifetime of devoted work for his community.

How then could the Court below have affirmed the decision of the Committee of Bar Examiners without having first wrestled with and determined adversely to the Petitioner these issues of constitutional moment which are before this Court?

2. THE COURT BELOW WAS REQUIRED TO EVALUATE THE CONSTITUTIONAL SIGNIFICANCE OF THE NEWSPAPER WRITINGS OF PETITIONER.

Respondent then turns to the question asked by the Court regarding the matters referred to on pages 5 through 8 of Respondent's brief in opposition to the Petition for Writ of Certiorari. (Resp. Br. p. 29.) Respondent answers this query by suggesting that (1) since no objection was made to these articles, the issue of whether Petitioner's rights were infringed is not properly before the Court; and (2) that there was ample evidence to sustain the Supreme Court's decision without considering these articles.

As to the first point, it must first be noted that the constitutional rights embodied in the First Amendment cannot be waived in the manner in which Respondent suggests.

This is not a situation where the articles were part of a mass of evidence some of which was admissible and some not. Here the articles about which the constitutional question arises constitute the entire body of evidence introduced by Respondent on this point. If the articles were improperly introduced nothing remains. In such a case it cannot be said that he waived his rights from the mere fact that Petitioner failed to object at the precise moment the articles were introduced.

In addition, it should be noted that Petitioner appeared at this hearing on request by the Committee of Bar Examiners and at the moment that these documents were introduced, Petitioner was appearing without counsel and was asked questions regarding these articles without any indication that primary evidence upon which he would subsequently be denied admission to the Bar was being introduced into the record. Further, Committee rules specifically state that:[8]

> ". . . Neither the hearsay rule, nor any other technical rule of evidence, need be observed . . ." (Rule X, Sec. 101, Rules Regulating Admission to Practice Law in California.)

In view of its own rules, for the Respondent to now suggest that the failure to make a formal objection in accordance with technical rules of evidence constituted a

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[8]At page 47 of the transcript of record, when attorney for the Petitioner inquired regarding the rules for cross-examination, he was informed by the chairman that: "We are very informal, Mr. Mosk, and our rules say we don't have to pay much attention . . ." relating to that rule which does not require formal rules of evidence at the hearings.

waiver of a basic constitutional right is hardly consistent with a desire to meet head-on the issues before this Court.

Respondent's second answer to the Court's inquiry is that even if the Court found the consideration of the California Eagle articles to be a violation of the Petitioner's constitutional rights, there were still other independent grounds for denying Petitioner admission to the bar.

On page 30 of its brief, Respondent asserts that the uncontroverted testimony that Petitioner had been a member of the Communist Party was sufficient to support the determination that Petitioner had failed to establish his "good moral character" or that he did not "advocate the violent overthrow of government."

Yet on page 47 Respondent concedes that it does not now nor has it ever taken "the position that past membership in the Communist Party necessarily disqualifies an applicant from admission to the California Bar"; Apparently realizing that the record fails utterly to show any indication of any acts of wrongdoing by the Petitioner, Respondent on page 59 endeavors to show some evidence of advocacy of force and violence. But where does it turn for evidence of this "wrongdoing"? To the very California Eagle articles which it asserts are unnecessary to the finding of the California Court.[9]

It is thus abundantly clear that Respondent relies not on any one point but basically relies on two interrelated

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[9]See also page 15 for further reference to this point.

and inseparable grounds: the alleged political associations of the Petitioner and the writing of Petitioner in the California Eagle. A careful examination of Respondent's position indicates that if evidence on either of these points were removed from the record, Respondent's position would fail almost from its own admissions.

3. THE FACT THAT NO DECISION WAS WRITTEN BELOW DOES NOT DETRACT FROM NECESSARY CONCLUSION THAT CALIFORNIA COURT CONSIDERED THE CONSTITUTIONAL QUESTIONS.

Respondent refers to the fact that no decision was written below, and in some manner seems to draw the conclusion from the lack of a written decision that the Supreme Court below must have relied on some state ground. As a practical matter, however, the contrary must be true.

The only tenable conclusion available is that the Court below considered the evidence presented in the record. The only evidence contained in the record other than that favorable to Petitioner related to the alleged beliefs, associations, writings, and comments of Petitioner all in the field of opinion and politics.

When the California Supreme Court determined not to review this ruling of the Committee of Bar Examiners, it must necessarily have determined that Petitioner's constitutional rights were not offended by the consideration of these matters.

III.

Reply Argument.

A. Introduction.

Petitioner has now dealt with the jurisdictional problems as raised by the reply brief of the Respondent. While the discussion contained under this heading moved on occasion into the area of the merits of the case before this Court, it is now the intention of Petitioner to turn from these jurisdictional points to meet fully the issues on the merits as raised by Respondent.

It will first be noted that the refusal of Respondent to admit Petitioner to the Bar of California denied him his rights under the First Amendment to the Constitution. The Respondent asserts that it has the right to "select" who shall be admitted to the bar by proscribing otherwise legal political conduct and thought. To Petitioner, this assumption of right and authority by Respondent is constitutionally wrong because it encroaches on the basic rights of Petitioner under the First Amendment. This wrong becomes even more serious because of the nature of the practice of law and the vital needs of our society to maintain a free and independent bar.

Petitioner then points out that the position taken by Respondent violates his rights under the Fourteenth Amendment. This issue must be seen in the context of this record. Petitioner established affirmatively his good moral character; he denied his personal belief in, and offerred affirmative proof that, he abhorred doctrines of belief or advocacy of the use of force and violence. Only then

did Petitioner decline on principle to answer further questions relating to his associations, thoughts and writings, to require Petitioner to respond further in this area on the state of this record would place upon him an unreasonable and arbitrary burden which violates his rights under the Fourteenth Amendment.

B. The Denial Violated Petitioner's Rights Under the First Amendment.

1. THE FIRST AMENDMENT DOES NOT PERMIT THE STATE BAR TO SELECT ITS MEMBERS BY ESTABLISHING POLITICAL TESTS AS ITS CRITERIA FOR JUDGING PROSPECTIVE MEMBERS OF THE BAR.

Respondent, at page 35, asserts that the "primary responsibility for *selecting* the personnel of its bar rests with the State of California . . ." The emphasis which has been added by noting particularly the use of the term "selecting" lays bare the fundamental evil in the position of the Respondent herein and highlights clearly why the balance of the position taken by Respondent runs afoul of the protection of the First and Fourteenth Amendments.

To say that the State Bar may select one applicant as against another based upon agreement or disagreement with the ideas or ideals of the individuals is to give to the State Bar a right not permitted under the Constitution of the United States.

This evil is compounded when we find the State Bar selecting isolated phrases from articles written by Petitioner and holding them up to the white light of historical perspective to determine whether the articles conform to the Committee members' present understanding of or

orientation toward world events of five years earlier. On page 59 of its brief, we find Respondent saying:

> "In addition it may be noted that his California Eagle articles also provide some direct evidence that he was sympathetic to and probably advocated the violent overthrow of the government—*e.g.*, the article set forth at page 213 *et seq.* of the record where he declared that loyalty to America meant militant (which Webster defines as engaged in warfare, fighting, etc.) support of the principles of the Constitution as Petitioner defined them. We feel that it is fair to surmise from Petitioner's articles and activities that his definitions of these principles are in close accord with those of the Communist Party."

By what right or authority may the Respondent herein by "surmise" set up the standards of what does and what does not "accord with (the ideas) of the Communist Party"?[10] By what type of upended logic does a sentence stating that a person believes in the "militant support of the principles of the Constitution" become proof that he supports the violent overthrow of that Constitution? The lack of logic in this interpretation only emphasizes the basic evil in allowing any governmental body to have the authority to examine and judge the "moral worth" of any political or social writings.

It is not the purpose of the Petitioner in this brief to argue the truth or falsity, the correctness or the error, in any or all of the articles written by Petitioner. It is only our purpose here to show that the logical conclusion

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[10]When the State Bar so interprets the State Bar Act it violates the rights of freedom of speech and press as safeguarded under the due process clause of the Fourteenth Amendment. (*De Jonge v. Oregon*, 229 U. S. 353; *Hebert v. Louisiana*, 272 U. S. 312.)

of Respondent's position is to deny Petitioner admission to the Bar by reason of the subjective personal interpretations of the articles by the members of the State Bar, or even of the Supreme Court of the State of California.

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary." (Mr. Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U. S. 357, 375.)

2. THE SANCTITY OF THE FIRST AMENDMENT IS OF EVEN GREATER IMPORTANCE IN THIS CASE BECAUSE OF OUR SOCIETAL REQUIREMENT OF A FREE AND INDEPENDENT BAR.

Much has been said by Respondent in the course of these proceedings regarding the right of the State to set qualifications for the practice of law. It has cited *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716; *Adler v. Board of Education*, 342 U. S. 485; *Orloff v. Willoughby*, 345 U. S. 83; *American Communications Association v. Douds*, 339 U. S. 382; *Gerende v. Board of Supervisors*, 341 U. S. 56; *Black v. Cutter Laboratories*, 351 U. S. 292; *Steinmetz v. California State Board of Education*, 44 Cal. 2d 816, Cert. denied 351 U. S. 915 in support of its position.

By citing these cases, Respondent would seem to equate the rights of teacher employees of public schools systems, employees in private industry, or draftees in the army with the rights of practitioners of the law. In a sense, it is ironic that it should fall upon the Petitioner—an applicant for admission into the great tradition of the law—to speak of this tradition, its meaning and its application.

No profession has higher traditions, a more glorious past, and a more just cause for pride in its accomplishments.[11] When we examine the basis for this pride we find that it is founded on fearless, unceasing and uncompromising leadership in protecting the rights of all citizens of our society which the legal profession has provided.

This tradition even antedated Thomas Erskine, who proclaimed in his famous defense of Thomas Paine that:

> "I will forever, and at all hazards assert the dignity, independence and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court . . . . from that moment the liberties of England are at an end." (Lloyd Paul Striker, For the Defense, Doubleday & Co., N. Y. 1947.)

And this great tradition was pridefully maintained through the actions of Charles Evan Hughes, defending Socialists in the State of New York, and Wendell Willkie in defending an American Communist leader before this very Court, despite the unpopularity of the causes and the danger to their personal popularity as leaders of major political parties.

The lawyer is not the servant of the state in the sense of the school teacher; nor must he follow the instructions of his employer like a private employee; nor is he part of

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[11] "Just as the lawyers of 1790 to 1840 took a leading part in fashioning the Country's ideals to suit political change, so we must now shoulder the task of relating them to business and economic change." Mr. Justice Stone quoted in Mason, *Harlan Fiske Stone*, Viking, New York, 1956, page 381.

a military unit which depends for its success on the unquestioning obedience of its individual components.

The lawyer is not any of these things. He is a member of a profession vested with the responsibility of protecting the individual against his society, and, at the same time, of protecting through the courts that society against the individual. The lawyer formulates the laws by which our society functions, assumes the responsibility for enforcing these laws; and if those laws or rulings violate the fundamental precepts of our society, it is the lawyer who assumes the initiative to invalidate those laws. Indeed he does play a unique role in our society.

When we allow the State Bar to *select* its "personnel for the Bar" in the manner which the State Bar of California suggests it must do at page 53 of its brief, we are allowing that organ of the State to choose which political attitudes are acceptable for lawyers, and what groups may be eliminated from the legal profession[12] we thereby destroy the foundation stone of the structure maintaining this unique position of the lawyer in our society. For if some prospective lawyers are to be eliminated by reason of their political beliefs and associations, the free play of ideas required for a truly free and independent bar will have been destroyed.[13]

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[12]This is indeed what Respondent here seeks to do; for it doesn't stop with denying Petitioner admission to the bar but suggests that if Petitioner were a lawyer, he should be disbarred for writing the articles contained in the record.

[13]"The profession of law because of its public and political character, must not be allowed to become the monopoly of any social or economic class." (Mr. Justice Stone, quoted in Harlan Fiske Stone by Alpheus Thomas Mason, Viking Press, New York. 1956, page 95.)

An analogy to this effort to restrict the membership of the Bar to persons of conformist political views has had its counterpart in the matter of the selection of persons from within the Bar to serve on the highest court of our land, this Supreme Court.

Perhaps, no more striking example can be found than the efforts to prevent the ratification of the appointment of Mr. Justice Brandeis, as a member of this very Court.

The Boston Morning Globe, on January 31, 1915, summed up the case against Mr. Justice Brandeis' appointment to the Supreme Court in the following language:

> "That Mr. Brandeis is a radical, a theorist, impractical with strong socialistic tendencies.
>
> "That he is given to extravagance in utterance, inspired by prejudice and intolerance.
>
> "That he is a 'self-advertiser,' reckless in his methods of seeking personal exploitation.
>
> "That he does not possess the 'judicial temperament' that would fit him for the duties of the Supreme Court Judge, in that he would be influenced by personal considerations rather than the merits of the cases submitted for impartial analysis and exact judgment."[14] (Alpheus Thomas Mason's "Brandeis,

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[14]One shudders to think what the Committee of Bar Examiners in California would have done to a Thomas Jefferson and the signers of the Declaration of Independence, who said that ". . . . whenever any form of government becomes destructive of these ends it is the right of the people to alter or abolish it." if they had sought admission to the California Bar.

Similarly, when Roger B. Taney came up for confirmation as a Associate Justice of the Supreme Court, The Boston Columbian Sentinal said Feb. 11, 1835 that: "The Senate will not only apply the veto to the pretensions of this man, but that it will pass a decided resolution to oppose the elevation of any man who is not perfectly sound in regard to the fundamental principles of the Constitution, as expounded by Daniel Webster." (Roger B. Taney by Carl Brent Swisher, McMillan, New York, 1935, page 312.)

a Free Man's Life," Viking Press, New York, 1946, p. 469.)

The similiarity of phraseology becomes even more startling when one notes the Respondent's suggestion on page 50 that the statements and articles by the Petitioner would be grounds to disbar him were he already a lawyer.

There is little that one can add to the comment of Mr. Justice Brandeis himself in discussing the attacks upon him in a letter addressed to Judge Charles F. Amidon:

> "No one but a fanatic can be sure that his opinions —political, economic or social—are correct, but no man, be he reactionary or progressive, ought to doubt that free thought and free speech are necessary in a democracy, and that their exercise in things public should be encouraged. My opponents throughout long years practically refuse to discuss publicly or privately with me the measures under consideration. For opposing arguments, they substituted attacks upon reputation, and the community permitted them to do so almost without a protest. This seems to me the fundamental defect. Our task in Massachusetts is to reconstruct manhood." (Alpheus Thomas Mason's "Brandeis, A Free Man's Life," Viking Press, New York, 1946, p. 676.)

Where can the line be drawn if the principles urged by the State Bar are to prevail? Whose judgment is to be accepted? Whose principles of today are so certain, so sure, so timeless in their fundamental truth that he can risk preventing admission to the Bar to one who disagrees in whole or in part? Will not our effort to exclude

the unorthodox thinker of today result in a sterile bar of tomorrow?[14a]

This Court is not called upon to determine whether the opinions expressed, the associations sought, or the ideas printed by the Petitioner in this case are good or bad, true or false, whether they stand the test of time, or whether the movement of history had shown them to be fallacious.[15] The issue is whether the American Bar and American democracy can survive the establishment of a principle which gives to any group in any State at any time the right to *select* which political ideas, which political associations, which political doctrines are acceptable, and which forbidden, for one seeking admission to the Bar.

It is submitted that the history of the Bar cries out against restrictions based on ideas or associations. Good moral character is not and cannot be determined by one's political ideals or associations.[16]

[14a]"Serious administrative difficulties arise in deciding where to draw the line in cases where it is attempted to deny a candidate admission to the Bar on the basis of political thoughts or affiliations or because of refusal to answer political inquiries. It is difficult to see how such elusive concepts as disloyal or doubtful loyalty can be used as a basis for denying admittance to the Bar." "The Illinois Bar and Individual Freedom," 50 Northwestern University Law Review 94, 103 (1955).

[15]"The preliminary freedom by virtue of the very reason for its existence does not depend as this Court has said, on proof of truth," *Near v. Minnesota*, 283 U. S. 697; *Patterson v. Colorado*, 205 U. S. 454.

[16]Petitioner pointed out in his opening brief (pp. 36 and 44-48) that there is no reasonable relationship between the political inquiries of Respondent and the type of moral character properly required for the practice of law. Respondent appears to respond to this point by asserting that the question as to membership in

3. The Respondent Equates Its Subjective Disagreement With the Contents of Articles With Evidence of Bad Moral Character.

Not only has Respondent moved into the area of attempting to select its members of the Bar by examining the political content and historical accuracy of their writings or the correctness of their thinking—or the wisdom of their associations—but Respondent has gone one step further. Respondent asserts that it has weighed the contents of the articles written by the Petitioner and has found the contents wanting.

At page 50 of the Respondent's brief, after examining the rules and duties of an attorney under the State Bar Act of California, Respondent has said that if the statements made by Petitioner were made by an attorney, they would become a basis for disbarment. Petitioner is not arguing such a case at this time but suggests that an effort to disbar an attorney by reason of such articles written in a newspaper would meet substantial constitu-

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the Communist Party is relevant to the issues here. Without rearguing at this point the issue of relevancy since it has been covered elsewhere, petitioner points out that mere relevancy alone is not sufficient to justify the questions asked by Respondent.

There are numerous matters relevant to cases before trial courts which may never be admitted before either judge or jury. Matters falling within the protection of the husband-wife, confessor-confessant and lawyer-client relationships are often most highly relevant to issues. Yet, in all of these and numerous other matters, high public policy considerations have determined that we must sacrifice the value of the relevant testimony in order to protect higher values of basic importance to society. Thus in this case, even if questions in this area were held to be relevant, they would still be improper because they fall within the prohibitions arising from societal policy considerations based upon the First and Fourteenth amendments.

tional objections. Nevertheless, it is important to examine the significance of this position of the State Bar at this point.

Now for the first time in these proceedings, Respondent is no longer asserting the "reasonable" position which it has endeavored to uphold in other proceedings relating to this case. Respondent no longer suggests that Petitioner had a *right* to write these articles or make these statements,[17] but now suggests that these articles show bad moral character. Respondent is no longer standing on its position that there was a simple failure to meet the burden of proof of good moral character, but rather suggests that the writing of these articles[18] is sufficient to establish affirmatively bad moral character.

The danger involved in opening the gates to this type of interpretative reading by the Committee of Bar Examiners is magnified by its own selection from the writings. As has been noted heretofore, Respondent has selected the word "militant"[19] as proof of belief in force and violence even though this word is joined to Petitioner's affirmance of his support of the principles of the Constitution.

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[17]But see page 51 where Respondent somewhat inconsistently (and reluctantly) concedes the right to publish these articles and admits that Petitioner cannot be punished for writing them.

[18]Perhaps coupled with the other evidence, although even Respondent's belief in the necessity for this additional evidence is not clear in the discussion on pages 49 and 50 of its brief.

[19]See page 15 of this brief.

When thus revealed, it becomes clear that to allow the State Bar to use newspaper articles of political opinion as a basis for showing bad moral character can and does lead to an arbitrary and unreasonable determination violative of the First and Fourteenth Amendments.[20]

4. THE STANDARD ERECTED BY RESPONDENTS IS AN ABRIDGEMENT OF FREEDOM OF SPEECH, OF THE PRESS, AND THE RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

Chiefly before, and then on fewer occasions after, his commencement of the study of law, Petitioner, in the role of newspaperman, wrote and published articles editorializing upon world affairs in the area of political decisions.

Respondents during the hearings presented Petitioner with some twenty-one of these published expressions of opinion (Resp. Br. p. 5) from which they have selected, as typical of these editorial expressions of opinions several quotations from this material for inclusion in their brief at pages 8 to 12.

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[20]Ira Michael Heyman, in his Yale Law Journal article in Volume 65, pages 879-80 (May 1956) points out that:

> "But if safeguarding the reputation of the Bar were expanded to require attorney conformity to varying community standards of personal belief in decorum, the individual bar examiner would have a practically unlimited discretion to deny admission on subjective grounds. Undoubtedly requiring a candidate for admission to show that his character satisfies the ethical standards of the profession is as justified as requiring him to demonstrate his professional learning, but the purpose of the requirement is one of qualification, not one of punishment. The analogy to the requirement of professional learning itself implies that good moral character must be determined by objective criteria designed to test the capacities required by the practice of law."

Respondents assert that these published opinions reflected Petitioner's deficient moral standards (Resp. Br. p. 17), to which they state they gave serious consideration as being relevant to his moral character (Resp. Br. p. 33); as a relevant and proper area of inquiry (Resp. Br. p. 40, footnote); as evidence indicating his standard of truth, honesty and general morality were such that he could not be considered a person of good, moral character (Resp. Br. p. 42); as directly suggesting that Petitioner was not a person of good, moral character (Resp. Br. p. 49); and as examples of repeated violent attacks on the character and integrity of the courts and other responsible persons by patently incorrect statements made without supporting evidence and with indifference to their truth or falsehood (Resp. Br. p. 49); and as grounds for disbarment if made as an attorney. (Resp. Br. p. 50.)

Moreover, so Respondents argue, although given an opportunity to do so, Petitioner failed, or refused to show his evidence supporting his published charges and likewise refused or failed to show that his current standards became nobler than the criteria he used as a newspaperman, inferred by Respondents to be debased. [Resp. Br. p. 50.)

Respondents, furthermore, argued that since these published editorial opinions expressed Petitioner's moral standards as a newspaperman, they are relevant to the determination of his good moral character as a candidate for admission to the bar; and whether they were made without evidence to support them, Respondents contend, is relevant to reflect his standards today. (Resp. Br. p. 50.)

While conceding Petitioner's constitutional right to publish this material and its immunity from preventive in-

junction, or subsequent punishment, Respondents urge that there is no constitutional bar to the consideration of the "evidence" contained in the noted editorial expressions (Resp. Br. p. 53) and that reasonable doubt (and "suspicions") (Resp. Br. p. 57) that Petitioner was a person of good, moral character thereby arose among other sources, from this "evidence."

But to reach these conclusions, the State Bar must examine each article perhaps sentence by sentence and paragraph by paragraph to determine the meaning thereof.

> "The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications . . . is significant of the deep-seated conviction that such restraints would violate constitutional right" (*Near v. Minnesota,* 283 U. S. 697).

Yet the effort by Respondents here to weigh and judge publications is nothing less than an effort to place a prior restraint on the political writings of potential members of the bar. For what aspirant to the Bar would dare write anything controversial for fear that the writing may not measure up to some future standard of fairness, reasonableness, or responsibility as arbitrarily established by a future committee of Bar Examiners?

Thus exposed to the light of reason, this position of Respondents amounts to the modest claim on its part that Respondent State Bar, a public corporation (Calif. B. & P. C. 6001) acting as the administrative arm of the Supreme Court of California, purports, through its Respondent committee of bar examiners, without statutory support, to assume the right, even duty, to make a "law" abridging freedom of the press, speech, and the right to petition the government for a redress of grievances. The

limitless ambit of this claim is particularly disconcerting when made after passing acknowledgement of the rights guaranteed by the First Amendment. The strictures thus attempted to be impressed on Petitioner are, moreover, expressed only in the *ad hoc* determinations of Respondent committee, cut to fit the case before it at the particular time of its presentation, without even the formality of published regulations upon the object. Petitioner ventures to say that if the criteria here used by Respondents in judging his moral quality as a candidate for the bar were formulated in writing that the transgression of the First Amendment would be ludicrously palpable.

C. Petitioner Was Denied Due Process of Law Contrary to the Fourteenth Amendment by Arbitrary and Unreasonable Administration Below of Burden of Proof in a Manner Violating Individual Rights and the Security of Personal Conscience of Petitioner.

The Respondent has conceded (Resp. Br. p. 35) that the practice of law is a right and may not be dismissed as merely a privilege, thus reducing the question at bar in Constitutional terms to whether or not such right has been arbitrarily and unreasonably interfered with or abridged in the action below. Petitioner urges such abridgement has occurred, and in grevious measure, and that the abridgement is particularly to be condemned because it occurs within the area of the First Amendment and threatens the independence of the bar.

Concededly California procedure places the burden of proof of good moral character upon applicants in proceedings to qualify for the practice of law. Petitioner makes no quarrel with such procedure when normally applied. In the proceedings below Petitioner discharged such burden in every respect and particularly which could

reasonably be asked of him, in the absence of the State's moving forward in some affirmative manner. To resolve the matter below against Petitioner for his failure to further respond to questions probing privacy of political opinion and association—in premises declared on oath to violate personal principle and conscience, and abridging at the core the liberties of the First Amendment—as was done below, constituted arbitrary governmental action denying due process of law.[20a]

Petitioner concededly met and discharged every aspect of the burden of proof respecting his possession of good moral character, save for declining out of principle to answer questions respecting solely political opinion and association. This area was narrowed and confined exclusively to the protected domain of the First Amendment by Petitioner's categorical declaration under oath that he did not, never had and never would in any form or manner advocate or believe in force and violence.

In all respects save belief, advocacy and association his full moral character and fitness was undisputed, and his record and qualifications exemplary. And as to negativing possible proscribable advocacy or association, Petitioner more than fairly met all reasonable burden of demonstrating such negative: *first*, by utterly and totally disavowing and denying any such advocacy on his part,

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[20a] In support of this general proposition on somewhat similar facts is the recent lower court case, *Coleman v. Watts* (Florida Supreme Court, May 11, 1955), 81 So. 2d 650 where the court concluded:

> "Although the burden is always upon the applicant to 'satisfy the Board of his or her moral standing', we have the view that when he has made the *prima facie* showing required by the statutes and rules governing admission to practice, 'it is incumbent upon those making objections to offer evidence to support the same and to overcome the *prima facie* showing made by the applicant.' . . ."

direct or indirect, in any form or manner;[21] *second,* by producing (by fortunate chance) antecedent written expressions on his part condemning and disavowing such advocacy at a time when foreknowledge of these proceedings was impossible;[22] and *thirdly,* by introducing an impressive body of letters from prominent members of his community long and well acquainted with him attesting to the character attributes normally associated with the practice of law and establishing the genuine conviction of the signers that Petitioner is not and could not be a believer in or an advocate of force and violence.[23]

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[21]"I am answering I never did, I do not and I never would advocate the overthrow of the government by force or violence. I do believe like leaders like Jefferson people should have the right through discussion, ballot, the minority view becomes the majority view, that changes like that are sought through the ballot box but never through force and violence. That I do not believe. I think my whole experience has shown that." [R. 37.]

[22]See pages 1-2 of this brief.

[23]If there was any indication that Petitioner believed, advocated or practiced overthrow of the government by force and violence, would a character reference say:

"I recommend Mr. Konigsberg as a person of high moral principle and character." [R. 290.]

or

"There is no question or doubt in my mind that he is of good moral character. . . ." [R. 292.]

or

". . . I have never heard him make a statement that would make me feel that he was not a man of strong character and a believer of democracy and the American idea." [R. 295.]

or

"(he) has impressed me as a man representing the finest ideals of Americanism . . ." [R. 305.]

or

". . . a person of exemplary character, genuine honesty and integrity . . ." [R. 306.]

or

"He indicated to me an open-mindedness seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen . . ." [R. 312.]

So doing Petitioner discharged all burden reasonably to be exacted from him. He stopped solely at the point of declining to volunteer declarations, or to answer questions concerning his present thoughts, opinions or associations,[24] after categorical and total disavowal by him of advocacy or belief in force and violence in any connection, manner or form. In such premises to continue upon him a burden to proceed further or answer constituted arbitrary governmental action disregardful of principle, reason and constitutional right, and violating due process of law.

At the core of the narrow issue presented here for resolution is not burden of proof, truly, but responsibility to go forward. In going to the point he did in denying advocacy or belief in force and violence respecting his thoughts and political associations Petitioner accounted to the limit to which he Constitutionally could be pressed as to such subjects, and fairly and truly marked on his

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[24]It should be noted that petitioner did respond to some questions regarding his beliefs. At page 40 of the transcript we find the following colloquy between members of the committee and petitioner:

"Mr. Preston: I deliberately did not. The first question we discussed at length is, 'Are you a Communist'?

A. I will say no, definitely no. The only thing I would describe myself very simply as one who has read a lot, studied a lot, because as a teacher of history and political education in the Army I believe strongly in the fundamental concepts of our democratic system.

Mr. Preston: Your answer that you gave was directed to the question, 'Are you a member of the Communist Party?'

A. Yes, and solely to that. If you want a categorical answer to 'Are you a communist?' the answer is no.

Mr. Preston: You gave us that.

Mr. Sterling: That is your answer.

A. (By the Witness): No.

Mr. Black: Would you care to state whether you have ever been a Communist?

part—and under oath—the line of non-protected thoughts, engagements or utterances under the Constitution. He stopped solely at the boundary line of speech and association nurtured and protected utterly by the Bill of Rights. At that point the State had neither right nor power to press him further to speak—at least not without laying greater, or different, foundation than laid below, if any such foundation existed. Petitioner had proceeded to the outer point to which mere inquiring interrogatories, absent evidentiary foundation grounded in individual scienter, could press him to advance.

For the State to require Petitioner to speak further in this constitutionally protected area, it was incumbent upon the State to produce some evidence of wrongdoing requiring further comment or response from Petitioner. To hold otherwise would grant an unrestricted right of interrogation to the Respondent and place upon Petitioner

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A. Do you mean by that as he is making the distinction philosophically or a member of the Communist Party?

Mr. Black: I mean in the same sense you have just answered that you are not now a Communist.

A. I would say my thinking has only been what I described a moment ago as being based on the elementary concepts of the American democracy, assuming that you mean do I think like a Communist; that is assuming we have some common understanding what you mean by that term.

Mr. Sterling: We are not talking now about a membership in any party.

A. Yes, philosophical views."

Having responded in this manner at the first hearing, petitioner at the second hearing indicated that if he was asked the same question again, he would decline to answer it on the same principle upon which he had declined to answer the other questions. [R. 76-78.] Petitioner thus emphasized that his position at all times was a principled one and that he was declining to answer solely because as a matter of principle he believed the committee did not have the right to inquire into his beliefs or associations and that this principle was protected by the First and Fourteenth amendments.

the burden of exposing his entire life, laying bare his every thought or deed, and stripping himself of all privacy in order to affirmatively establish to the subjective satisfaction of the Respondent that he was a person of good moral character.

It is critical to remember that Petitioner declined to speak or proceed further than he did not out of guilt or wrongdoing but *out of principle.* He averred under oath that he did not in any form or manner advocate or believe in force and violence against government. Beyond that he declared on oath he was barred by compelling conviction of duty as a citizen and by moral conscience from rendering any disclosure or accounting unto government as to what he did nor did not believe in or advocate, or as to what had or had not been his political association. As to such matters he was foresworn by moral conscience and conviction from disclosure and accounting to government even as he would be foresworn to silence as to the manner of exercise of his right of ballot.[25]

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[25]Petitioner stated in part below:

> "A. I understand that. I can only say what I said several times already. Under those circumstances the constitutional guarantee of free speech means nothing, if it doesn't mean you can keep your views to yourself, and certainly lawyers recognize that and should be among the first to defend that right. I think the legal profession, particularly the leaders of the legal profession should be the first to insist on it. Put another way, of what meaning is any constitutional guarantee if it becomes a crime to invoke that guarantee?
>
> . . . And as I have indicated before, this is such a profound matter of principle with me that no matter what the price is I cannot give it up."

Petitioner further said:

> "Now, I don't think the Committee wishes me to labor that point, though I think I have an adequate legal basis for the

Petitioner does not assert that rights under the First Amendement are absolute, but certainly political speech and association not connected to advocacy of force and violence is privileged and free in Constitutional law, and is shielded and immunized against governmental restraints and abridgements. This granted, defense of such area of liberty of speech, and upholding of the same against governmental acts of interference and intrusion, including coerced accountings or disclosures, is, or at very least may honestly and reasonably be conceived to be, not merely the right but the abiding moral and Constitutional *duty* of citizens dedicated to Constitutional government. Yet it is for assertion of just such conviction of moral and constitutional duty that Petitioner below was disqualified from the bar. This is arbitrary and unreasonable governmental action, and in Constitutional terms is a denial of due process of law.

It constitutes a totally arbitrary inferring of nonmorality from proof of morality; finding bad moral character from evidence and acts demonstrating highest moral integrity. For the State to seek to coerce Petitioner on pain

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position I am taking, and I referred the Committee previously to a comparable historical period in our history, the Alien and Sedition Laws, in which, all of which that is, our American history shows that it is a very grave and a very solemn duty of a person who believes in these principles to defend them, to use them and not to give way.

And one of the other quotations I have shows that there is nothing in our constitutional history that says in periods of stress must you give up these rights. Particularly in periods of stress you should not give up these rights. I know the members of this Committee are far more familiar with this than I. I am familiar with the environment and the circumstances this Committee has to operate under. I am aware of what are my duties as a citizen."

—R. A. pp. 49-50 and 113-114.

of denial of right to practice law to abandon and betray expressed moral conviction presents the anomalous spectacle of the State, in a "morality" inquiry, proposing avowedly to destroy and ride down moral integrity, not to inquire into or nurture such. Thus the State pursues and prizes subservience, not manliness; weakness, not moral strength and dedication. So to act is to act at war with the asserted end of seeking character fitness for the practice of law and constitutes arbitrary action violating reason and due process.

Moreover, the disregard and violation of conscience below is particularly critical because occurring not in an area of purely private concern but in an area affecting and treating of free political speech and association, and this in premises affecting deeply the existence and continued wellbeing of a free and independent bar.

Absent advocacy of force and violence the fullest freedom of speech and association, even for "Communists" (*U. S. v. Dennis,* 341 U. S. 494; *De Jonge v. Oregon,* 299 U. S. 353), is an "imperative" of the Constitution, because constituting "the very foundation of constitutional government." (*De Jonge v. Oregon, supra,* at p. 365.) "Communists, we may assume, carry on legitimate political activities." *A. C. A. v. Douds,* 339 U. S. 382, 393), and as to all groups and associations scienter of proscribed or proscribable utterances is crucial in judging any individual member or adherent, for programs of groups can be different in content to different men, and much that is protected and even of highest Constitutional value may attend also the advocacy of groups asserted in other regards to espouse illegal advocacy of force and violence. (*Wieman v. Updegraff,* 344 U. S. 183; *Schneiderman v. United States,* 320 U. S. 118; *Bridges v. Wixon,* 326

U. S. 135.) Under the Constitution even the speech of the Communist Party proper, absent the subject of force and violence is free and protected, to be guarded, in the words of this Court, because of "[its] societal value" with "scrupulous care." (*Dennis v. United States*, 341 U. S. 494, 503, 516.) And *a fortiori* what is protected and rendered shielded and secure for the Communist Party is rendered no less so for persons who on grounds of conscience and Constitutional principles refuse to acknowledge or accede to claim of power by government to compel disclosure as to such or any other political association by individuals.

Moreover, within the premises of a free and independent bar the upholding of conviction and conscience as to the great Constitutional liberties of thought, speech and association is particularly crucial and important. A subservient bar can only make for a subservient people, and, in the end, for a subservient Constitution. The faith of the nation, which it is the special obligation of an independent bar to express, defend and exemplify, lies not in subservience to government but in jealous assertion of independence, manliness and liberty. The nation's faith is that of Madison's "Remonstrance," and the historic admonition therein that:

> "[Governments] are but the creatures and vice-regents of the [people]. Their jurisdiction is both derivative and limited: It is limited with regard to co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the

people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The people who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves."

Madison's, "Memorial and Remonstrance," quoted in 330 U. S. 63, 65.

Respectfully submitted,

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January 8, 1957.

SUBJECT INDEX

PAGE

Preliminary statement 1

I.

Jurisdiction 2

II.

Constitutional and statutory provisions considered 2

III.

Questions presented 3

IV.

Statement of the case 4

V.

Reasons why petitioner has not properly claimed the jurisdiction of this court 11

VI.

Reasons why certiorari should not be granted 16

TABLE OF AUTHORITIES CITED

CASES	PAGE
Adler v. Board of Education, 342 U. S. 485	19
American Communications Assn. v. Douds, 339 U. S. 382	20
Anastaplo, George, In re, 121 N. E. 2d 826	23
Anastaplo, George, In re, 348 U. S. 946; reh. den., 349 U. S. 908	24
Black v. Cutter Laboratories, 43 Cal. 2d 788	17
Brock v. North Carolina, 344 U. S. 424	1
Burstyn v. Wilson, 343 U. S. 495	1
Crowell v. Randall, 10 Pet. 368	11
Dewey v. City of Des Moines, 173 U. S. 193	13
Enterprise Irr. Dist. v. Farmers Mut. Canal Co., 243 U. S. 157	14
Fox Film Corp. v. Muller, 296 U. S. 207	14
Gaines, Estate of, 15 Cal. 2d 255, 100 P. 2d 1055	19
Garner v. Bd. of Pub. Wks. of L. A., 341 U. S. 716	19, 20
Home Ins. Co. v. Dick, 281 U. S. 397	13
Hulbert v. City of Chicago, 202 U. S. 275	13
Keokuk v. People of Illinois, 175 U. S. 626	13
Lynch v. New York, 293 U. S. 52	11
McGoldrick v. Compagnie General Trans., 309 U. S. 430	13
Orloff v. Willoughby, 345 U. S. 83	20
Pepper, Estate of, 158 Cal. 619, 112 Pac. 62	19
Southwest Bell Telephone Co. v. State of Oklahoma, 393 U. S. 206	11
Stembridge v. Georgia, 343 U. S. 541	14

PUBLICATION	
California Eagle, April 27, 1950, to April 19, 1951	6
California Eagle, July 28, 1950	22
California Eagle, July 28, 1950, to December, 1950	5
California Eagle, May 11, 1950	6

PAGE

California Eagle, October 5, 1950 7
California Eagle, February 2, 1951 7
California Eagle, March 29, 1951 7

RULES

Rules Regulating Admission to Practice Law, Rule X 5, 14

STATUTES

California Business and Professions Code, Secs. 6000-6154 4
California Business and Professions Code, Sec. 6010 4
California Business and Professions Code, Sec. 6046 4
California Business and Professions Code, Sec. 6047 5
California Business and Professions Code, Sec. 6060 2
California Business and Professions Code, Sec. 6060(c) 4, 11
California Business and Professions Code, Secs. 6060-6068 4
California Business and Professions Code, Sec. 6064.1 ..... 2, 4, 11, 13, 21, 23
California Business and Professions Code, Sec. 6066 11
California Business and Professions Code, Sec. 6067 5
California Code of Civil Procedure, Sec. 2065 19
United States Code, Title 28, Sec. 1257 2
United States Constitution, First Amendment 1
United States Constitution, Fifth Amendment 1
United States Constitution, Fourteenth Amendment 1, 2, 11

IN THE

Supreme Court of the United States

October Term, 1955.

No. .....

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

Petitioner has prayed for a Writ of Certiorari to review the denial of his application for admission to the State Bar of California. He asserts that his rights under the First, Fifth and Fourteenth Amendments have been infringed by respondents' failure to certify him to the Supreme Court of California as a person qualified for admission to the Bar.

It is clear that the Fifth Amendment is not applicable to State action. The First Amendment is applicable only to the extent that it is incorporated in the Fourteenth Amendment. Respondents, therefore, will limit their arguments to the Fourteenth Amendment. They believe that the issues before this Court will be clarified thereby.

Brock v. North Carolina (1953), 344 U. S. 424;
Burstyn v. Wilson (1951), 343 U. S. 495.

I.
Jurisdiction.

Petitioner claims jurisdiction under 28 U. S. C. 1257. For the reasons set forth in Section V below, respondents deny jurisdiction on the grounds that:

1. The Federal question was not duly presented to the Supreme Court of the State of California.

2. The record fails to show that the Federal issue was necessary to the decision of the Supreme Court of the State of California.

II.
Constitutional and Statutory Provisions Considered.

The Fourteenth Amendment provides:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The basic act governing admission to the bar in the State of California is to be found in the Business and Professions Code of the State of California. The principal sections involved are Sections 6060 and 6064.1. These sections read as follows:

> "Section 6060. QUALIFICATIONS FOR APPLICANTS:
>
> "To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:
>
> (a) Be a citizen of the United States.
>
> (b) Be of the age of at least 21 years.

(c) Be of good moral character.

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination . . ."

"Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED:

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, Ch. 179, Sec. 1.)"

III.

Questions Presented.

1. Where petitioner's Brief before the California Supreme Court completely failed to raise or discuss any constitutional issue, can such issue thereafter be raised before this Court?

2. Will this Court grant certiorari where the decision of the Supreme Court of the State of California is fully supported by an independent non-Federal ground?

3. Has petitioner raised a substantial Federal question?

4. Did the Committee of Bar Examiners violate petitioner's constitutional rights by considering newspaper articles written by petitioner in which he made irresponsible and unfounded attacks on the character and integrity of this Court and other respected persons?

5. Were petitioner's constitutional rights violated by the consideration by the Committee of Bar Examiners (to the extent that it was relevant to the issues of petitioner's good moral character and his advocacy of the

violent overthrow of the Government) of evidence that petitioner was a member of, and in active and sympathetic association with the Communist Party?

6. Does the State Bar Act of California violate due process of law by requiring an applicant for admission to the Bar to bear the burden of proving that he does not advocate the violent overthrow of the Government?

IV.

Statement of the Case.

The Practice of Law in the State of California has, for many years, been governed by the State Bar Act set forth in Sections 6000 through 6154 of the California Business and Professions Code. The State Bar is governed by the Board of Governors (Sec. 6010). Under the powers given it (Sec. 6046) the Board of Governors has established the Committee of Bar Examiners of the State of California with the duty:

> "(a) To examine all applicants for admission to practice law.
>
> "(b) To administer the requirements for admission to practice.
>
> "(c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter."
>
> Calif. Bus, and Prof. Code, Sec. 6046.

Sections 6060 through 6068 set forth the requirements for admission to the practice of law. These include the requirements that the applicant:

1. Shall be of good moral character (Sec. 6060(c)).

2. Shall not advocate the violent overthrow of the Government (Sec. 6064.1)).

3. Shall take an oath to support the Constitution of the United States and the Constitution of the State of California (Sec. 6067).

In accordance with Section 6047, the Committee of Bar Examiners, with the approval of the Board of Governors, have adopted Rules Regulating Admission to Practice Law to supplement the statutory provisions.

Petitioner does not assert that he was, in any manner, denied a fair hearing in accordance with the statutory procedures and administrative rules by either the Southern Subcommittee or the Committee of Bar Examiners. On the contrary, both he and his attorney affirmed (and the record clearly shows) that he was given a full and fair hearing and every opportunity to present his case [Ex. B, pp. 54 to 56].

In accordance with the Rules Regulating Admission to Practice Law (Rule X), petitioner was confronted with the evidence bearing adversely on his qualifications [Ex. A, pp. 7, 15 and 62 *et seq.*]. Petitioner was in no way restricted at the hearings and was allowed to produce any evidence or make any statements which he deemed relevant to his qualifications for admittance to the California Bar. All such evidence was considered by the Committee of Bar Examiners.

The evidence most directly relevant to the Committee's determination that petitioner had failed to establish that he was qualified for admission to the Bar is summarized below:

1. Twenty-one photostatic copies of the editorial pages of the California Eagle (a newpaper distributed primarily to the Negro population of Los Angeles) covering dates from July 28, 1950 through December, 1950, were intro-

duced in evidence by the Committee [Ex. 1]. Petitioner himself subsequently introduced fifty-one of his California Eagle articles appearing between April 27, 1950 and April 19, 1951 [Ex. 6]. These articles consistently followed the Communist Party line, and in doing so, violently attacked the Supreme Court of the United States and other government leaders who acted contrary to Communist wishes. Respondents hope that members of this Court will have a chance to examine the articles themselves, but for those who cannot, a few quotations will illustrate their nature:

> "When the Supreme Court of these benighted states can refuse to review the case of the Hollywood Ten—thus making that high tribunal an integral part of the cold war machine directed against the American people—then the enemies of democracy have indeed won a major victory. When the commanders of the last legal bulwark of our liberties sell out to the enemy, then the fascists have gone far, much farther than most people think. He who cannot see the dangerous damnable parallel to what happened in Germany is willfully blind.
>
> "When the Supreme Court in effect accepts and sanctions the treasonous thinking of the Tenneys and Rankins and McCarthys as basic to American patriotism, the august justices—who took a sacred oath to defend our constitution—are guilty of subverting both the spirit and the letter of that great document. What a sordid role for the court of Brandeis and Holmes!" (May 11, 1950.)
>
> "Traitor! Traitor!
>
> "Betrayal is in the air. Judges, with impunity, violate our constitutional rights—and editors honor them for it. Stool pigeons are the new national

heroes, and hypocrisy has been raised to the level of national policy.

"The president violates his oath of office by dragging us into war—and the nation's spiritual leaders applaud. But when the federal government betrays its trust in failing to defend Negro citizens from the Southern lynchers, the same leaders are dumb as the dead." (March 29, 1951.)

"Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as 'killers.' No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the 'American way of life' we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure." (October 5, 1950.)

"We must also arm ourselves with the truth about the world's daily events. This will be found only in such publications as the California Eagle, People's World, National Guardian and the new negro monthly 'Freedom' and in the radio programs of an Averill Berman." (February 2, 1951.)

Petitioner generally refused to answer questions designed to ascertain whether he would write such irresponsible articles today and whether he had any evidence to support his charges when he made them. Thus, for example, he was asked:

"Would you today charge the Supreme Court of the United States with selling out to the enemy as you did in your May 11, 1950 article? [Exhibit B, pages 32, 33.]"

"Have you any evidence to support your statement that the Supreme Court sold out to the enemy? [Exhibit B, page 33.]"

And in each case refused to answer.

2. The transcript of petitioner's appearance before the California Senate Fact Finding Committee on Un-American Activities (commonly known as the "Tenney Committee") [Ex. 2], and petitioner's written statement to that Committee [Ex. 3] were introduced in evidence. This latter statement read in part:

". . . I have been studying the deeds of the rulers of our country and their representatives—of which the Tenney Committee is an example—and with deepening horror I am forced to conclude that it is you who are the real enemies of our country and world peace. You, the financial-military bipartisan cabal, are the subversive Americans.

* * * * * * * *

"As a Jew, I accuse you of planning an American in which my people can find no security. You are capable of doing to us what the Nazis did.

"As a veteran, I accuse you of betraying all the promises our government made to Americans when we went to war. You have squandered the glorious opportunities our war sacrifices gave our nation to build world peace and a better America. You have undermined our pride in our country. You are diabolically creating disillusionment, despair and spiritual decay, to prepare a soil in which facist ideas can flourish—and democracy die.

"As a citizen, I accuse you of shaming my country before the liberty-loving peoples of the earth. You have made America, formerly honored as the savior of democracy, the most feared and hated nation. What a spectacle you make of us: the most powerful

nation on the globe claiming to be defenseless, terrified of decency and progress and every free idea. You have corrupted our magnificent war aims and turned them into their opposites. You are undermining our faith in the democratic form of government. You are conspiring to annihilate America if need be to achieve your goals.

"In discharge, therefore, of my responsibility as a citizen, I do hereby declare war without quarter on you un-Americans, the enemies of my country, my people, and democracy. I pledge my word to use every democratic means to defeat you."

Petitioner was questioned concerning these Exhibits and generally refused to answer any questions disassociating himself from the Communist Party and its front organizations, or indicating that he had any basis for his statements or that he would not make such statements today.

3. Mrs. Alice Bennett appeared before the Committee [Ex. A, pp. 62, *et seq.*], identified the petitioner, and testified in his presence that in 1941 she had been a member of the Communist Party and had seen petitioner at meetings of a cell or unit of the Party over a period of months [Ex. A, pp. 62, 63, 76, 77]. This unit was small and included only six or seven people. Although by examination and argument petitioner attempted to cast doubts on her veracity and memory, he never directly questioned the truth of her disclosure. In the Committee hearing petitioner was directly asked whether he wished to deny any part of her testimony [Ex. B, p. 35]. His only reply was that the question related to opinions, beliefs and political affiliations and was beyond the power of the Committee to ask.

The principal contrary evidence produced by petitioner was a series of letters by persons stating that they believed Mr. Konigsberg to be a person of good moral character [Ex. E]. These letters were considered by the Committee. However, their persuasiveness was limited since none of them were directed to, or showed any knowledge of, the specific matters causing the Committee to have doubts concerning petitioner's qualifications (Resp. Br. in the California Supreme Court, p. 31, *et seq.*).

At the Subcommittee hearings petitioner answered several of the Subcommittee's questions. Thus, for example, he stated that the totalitarian form of government was repugnant to him [Ex. A, p. 26], but his subsequent testimony [Ex. A, p. 27, *et seq.*] and other evidence in the record [*e.g.*, Exs. 1 and 3] made it clear that he did not consider Russia as having a totalitarian form of government but that the United States did. However, petitioner's general position throughout the hearings (and particularly before the full Committee) was that any questions in any way connected with his beliefs or associations would not be answered. Thus, he refused to answer not only whether he was now or had ever been a member of the Communist Party [Ex. B, pp. 37 and 38], but refused to answer questions concerning his membership in any other organization [Ex. B, p. 22]. Similarly, he refused to indicate whether he had had any evidence to support his attack on the character and integrity of the Supreme Court and other governmental officials and whether he would make such unsupported attacks today [*e.g.*, Ex. B, pp. 32 and 33].

The Committee of Bar Examiners considered all relevant evidence before it, including the demeanor of the

witnesses, and concluded that petitioner had not sustained the burden of proof:

1. That he was possessed of the good moral character required by Section 6060(c) of the State Bar Act, or

2. That he had complied with the provisions of Section 6064.1 of said Act.

In accordance with California Business and Professions Code, Section 6066, this determination was reviewed and sustained without opinion by the California Supreme Court.

V.

Reasons Why Petitioner Has Not Properly Claimed the Jurisdiction of This Court.

Respondents do not lightly question the jurisdiction of this Court in a matter involving an assertion that petitioner has been denied the privilege to practice law in violation of the Fourteenth Amendment. However, jurisdiction is so clearly lacking in the present case that respondents would be remiss in their duties if they did not raise the issue.

In order to invoke the jurisdiction of this Court, petitioner must show:

1. That a Federal question was duly presented to the highest Court of the state, and

2. That the decision of the highest Court of the state actually decided the Federal question or that judgment as rendered could not have been given without deciding it.

Southwest Bell Telephone Co. v. State of Oklahoma (1938), 393 U. S. 206;

Lynch v. New York (1934), 293 U. S. 52;

Crowell v. Randall (1836), 10 Pet. 368.

Petitioner has failed to show either.

At the hearings petitioner repeatedly claimed a First Amendment privilege not to answer the Committee's questions. However, the only presentation of constitutional issues before the California Supreme Court is found at pages 4 and 5 of the Petition.

Once having summarily raised these issues, petitioner completely abandoned them. Respondents have reread petitioner's 44-page Brief before the California Supreme Court. They have looked in vain for a single reference to any violation of petitioner's constitutional rights. Beginning at page 29 of his Brief, petitioner contended that "Respondent cannot base its denial of admission upon the fact that this petitioner declined to answer certain questions." If petitioner felt he had constitutional objections of any real substance, surely he would have raised them at this point. But, even here, peitioner argued only the undesirability of respondent's action and utterly failed to urge any constitutional objections to it.

We cannot only conclude that petitioner felt the constitutional issues were of so little substance that they did not warrant being mentioned in his Brief to the California Supreme Court. Now that he has exhausted his other arguments and can have no further appeal without the constitutional issues, they suddenly assume great importance to him. But this Court has wisely protected itself against such conduct by long ago establishing the rule that if the constitutional issues are not duly presented to the Court below, they may not be urged before this Court.

Respondents submit that the present case is within that rule and the jurisdiction of this Court should be denied.

McGoldrick v. Compagnie General Trans. (1940), 309 U. S. 430;

Hulbert v. City of Chicago (1906), 202 U. S. 275;

Home Ins. Co. v. Dick (1930), 281 U. S. 397;

Dewey v. City of Des Moines (1899), 173 U. S. 193;

Keokuk v. People of Illinois (1900), 175 U. S. 626.

However, even if we assume that the constitutional issues were properly presented to the Supreme Court of California, petitioner has utterly failed to show that they were decided by that Court or necessary to its decision. On the contrary, there is every indication that the California Supreme Court's decision was based on non-Federal grounds.

As already indicated, petitioner's Brief before the California Supreme Court did not argue the existence of a constitutional issue. His position was that respondents had erred in refusing his certification because:

1. He had fulfilled the burden of proving his good moral character.

2. (a) The burden of proving that he advocated the violent overthrow of the Government (*i. e.*, that he was not qualified under Business and Professions Code, Section 6064.1) was on respondents.

(b) Even if petitioner had the burden of proof under Business and Professions Code, Section 6064.1, he had met this burden.

3. Respondents violated their own Rule X by failing to advise petitioner of the information adverse to his good moral character.

4. The Committee improperly applied the statutory requirements by basing its decision on petitioner's political, social and economic beliefs.

Thus, petitioner's Brief was concerned entirely with questions of state law and no Federal issue was suggested. Respondents submit that the decision of the California Supreme Court could and did rest on these non-Federal issues.

However, there is no need to engage in speculation on this point. It is well settled that petitioner cannot claim the jurisdiction of this Court unless he has affirmatively established that the decision below necessarily rested on the constitutional issue which he now urges. If the decision below could have rested on either a Federal or a non-Federal ground, petitioner has not established the jurisdiction of this Court.

Stembridge v. Georgia (1951), 343 U. S. 541;
Fox Film Corp. v. Muller (1935), 296 U. S. 207;
Enterprise Irr. Dist. v. Farmers Mut. Canal Co. (1916), 243 U. S. 157.

It may be added that not only did an adequate non-Federal ground exist, but the decision of the California Supreme Court necessarily rested on this ground and not on any substantial constitutional issue.

The gist of petitioner's case before this Court is that his constitutional rights were violated because he was denied admission on the basis of his social, political and economic beliefs. Respondents specifically stated to the

California Supreme Court that their determination did not rest on petitioner's political, social and economic beliefs:

> "Respondents wholeheartedly agree with petitioner that one's political, social and economic beliefs are not, and should not, be a test for admission to the Bar. Such beliefs were not the basis for refusing petitioner's application. Evidence before the Committee indicated that petitioner was actively associated with groups and persons known to perform and condone immoral acts (under any reasonable definition of the term 'immoral') and to advocate the violent overthrow of the Government by force and violence. In addition, petitioner's actions in apparently making irresponsible attacks on the Supreme Court of the United States and other responsible government officials raised additional doubts whether petitioner could be said to be 'entitled to the high regard and confidence of the public.' It was these matters and not political, social or economic beliefs which caused the Committee concern and required additional inquiry. The Committee's questions were directed to this end. Since petitioner refused to answer these questions, the Committee never reached the question whether an applicant who is a member of the Communist Party but convincingly disassociates himself from personal participation in their immoral or illegal acts should be admitted to the Bar." (Pp. 14 and 15 of Resp. Br. before the Supreme Court of the State of California.)

Thus, even if we could otherwise have assumed that the California Supreme Court might have determined that social, economic and political views were relevant to the question of good moral character and advocacy of governmental overthrow, in view of respondents' disclaimer the California Supreme Court necessarily determined that,

ignoring all evidence of petitioner's social, political and economic views, there was sufficient evidence in the record to support the Committee's determination. Since no constitutional issue of any substance can be raised concerning this evidence, respondents respectfully urge that the jurisdiction of this Court has not, and cannot, be shown by petitioner.

VI.

Reasons Why Certiorari Should Not Be Granted.

Even were the jurisdictional requirements ignored, petitioner has not shown grounds to warrant certiorari:

Respondents would be among the first to denounce any State which refused to admit a qualified applicant to the Bar because his social, economic or political views deviated from those of the examining committee. We would have no hesitation in declaring that such action should be declared unconstitutional by this Court. Should an applicant appear before the Committee of Bar Examiners of the State of California and testify that he was a philosophical Communist, but was not associated with the Communist Party and did not advocate the violent overthrow of the Government (and the record otherwise supported his testimony) respondents have little doubt that he should be and would be admitted to the California Bar. But, petitioner's arguments to the contrary notwithstanding, that is not the question before the Court in the present case.

Even if it is assumed that the Communist Party has certain legitimate functions as an expression of a particular political, social or economic viewpoint (respondents express no opinion as to the propriety of this assumption), it is well established that the Communist Party, and a

large portion of its members, advocate the overthrow of the Government by force and violence and use and condone immoral actions to accomplish this end. Most of the leaders of the Communist Party are now serving prison terms for violation of Federal laws. (Judicial and legislative determinations establishing the nature of the Communist Party and its unlawful objectives and methods are so well known that documentation is probably unnecessary, and hence has not been set forth in this Brief. Collections of such determinations can be found at pages 22 to 26 of respondents' Brief to the California Supreme Court and pages 800, *et seq.*, of *Black v. Cutter Laboratories* (1955), 43 Cal. 2d 788.) It is clear from the transcript of the hearings that evidence of petitioner's Communist affiliations was considered only because of its bearing on these improper activities. Moreover, respondents took note of the obvious irrelevancy of evidence of political, social and economic beliefs in their Brief to the California Supreme Court where they specifically stated that no evidence of petitioner's social, political or economic views was considered in their determination (Resp. Br. pp. 14-15, before the California Supreme Court quoted at page 15, *supra*). The decision of the California Supreme Court therefore necessarily determined that, apart from any evidence of political, social or economic beliefs, there was sufficient evidence in the record to sustain the Committee's determination.

Thus, not only is the record devoid of any indication that petitioner's politial, social and economic views were considered by the Committee, but, in view of the decision of the California Supreme Court, it is improper for petitioner to again attempt to argue that his political, social

and economic views were considered. The questions petitioner has prescented must therefore be rephrased as follows:

1. Did the Committee of Bar Examiners violate petitioner's constitutional rights by considering newspaper articles written by petitioner in which he made irresponsible and unfounded attacks on the character and integrity of this Court and other respected persons?

To ask this question is to answer it. They obviously did not thereby violate his constitutional rights.

2. Were petitioner's constitutional rights violated by the consideration (to the extent that it was relevant to the issues of petitioner's good moral character and his advocacy of the violent overthrow of the Government) by the Committee of Bar Examiners of evidence that petitioner was a member of, and in active and sympathetic association with the Communist Party?

Again, no real constitutional objection is presented. As discussed above, the Communist Party and many of its members are known to adocate unlawful objectives such as the violent overthrow of the Government and to use and condone immoral actions to accomplish these objectives. Sympathetic and active association with such an organization and such persons is relevant to a determination of an applicant's good moral character and whether he advocates the violent overthrow of the Government. This no more infringes an applicant's constitutional rights than considering his association with any other criminal or dissolute gang.

Similarly, consideration of petitioner's refusal to answer questions concerning his membership in the Communist

Party is an application of basic California rules of evidence and does not raise a constitutional issue.

Cal. Code Civ. Proc., Sec. 2065;

Estate of Gaines (1940), 15 Cal. 2d 255, 100 P. 2d 1055;

Estate of Pepper (1910), 158 Cal. 619, 112 Pac. 62.

Use of both of these types of evidence was clearly proper.

As was stated by this Court in sustaining the right of the City of Los Angeles to require, as a condition of employment, disclosure of past or present membership in the Communist Party:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment."

Garner v. Bd. of Pub. Wks. of L. A., 341 U. S. 716, 720.

A similar thought was expressed in *Adler v. Board of Education* (1951), 342 U. S. 485.

> "* * * One's associates, past and present as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. * * *."

Adler v. Bd. of Education, 342 U. S. 485, 493.

See also:

Orloff v. Willoughby (1952), 345 U. S. 83.

It may be added that under the principles established in *Garner v. Board of Public Works of Los Angeles* (1953), 341 U. S. 716, California could properly require every applicant for admission to the Bar to disclose his past or present membership in the Communist Party and summarily refuse to admit any applicant who refused to make this disclosure. Under the principles of *American Communications Assn. v. Douds* (1949), 339 U. S. 382, California could properly disqualify any applicant who was knowingly a member of the Communist Party. Even were we to assume that these cases marked the outer most limits of permissible state action, respondents' actions are so obviously within these bounds as not to require further discussion. Respondents merely considered evidence of Communist Party membership to the extent that it was relevant to determination of petitioner's qualifications under the statutory standards.

3. Does the State Bar of California violate the process of law by requiring an applicant to bear the burden of proving that he does not advocate the violent overthrow of the Government.

Again, it seems clear that no substantial constitutional issue has been raised. However, this question is of such importance to the proper administration of the statutory requirements for admission both in California and other states that respondents will consider it in more detail.

In California (as in most, if not all, other states), it has long been established that the candidate for admission to the Bar bears the burden of proving that he complies

with each of the statutory requirements for admission. This has always been considered a reasonable and proper requirement and respondents are unaware of any prior cases seriously contesting its constitutionality. Petitioner does not attack the requirement that he must bear the burden of proving good moral character, but argues only that he should not be required to show that he does not advocate the violent overthrow of the Government.

Requiring the burden of proof to be born by the applicant is not only reasonable but necessary to the enforcement of the statutory requirement. The applicant, presumably has all of the information necessary to show that he does not advocate the violent overthrow of the Government freely available to him.

It may be added, in view of petitioner's assertions to the contrary, that the record makes it very clear that no unreasonable amount of proof was required of him.

Petitioner stated at the hearings that he did not advocate the violent overthrow of the Government. He produced no substantial supporting evidence. (Such evidence as he did produce is discussed in greater detail at pages 42, *et seq.*, of respondents' Brief before the California Supreme Court.) It is unnecessary to engage in an academic discussion of whether, with no other evidence in the record, respondents could constitutionally have refused to believe petitioner and reject his admittance under Section 6064.1. In the usual case where there is no evidence to the contrary, an applicant's unsupported statement that he does not advocate the violent overthrow of the Government is considered sufficient and it would have been so considered in this case. However, in the

present case there was substantial evidence to the contrary:

1. Articles in which petitioner specifically indicated that he was loyal only to governments of which he approved and would have no hesitation in following the example of our founding fathers and overthrowing the Government if he felt its officials were betraying the Constitution:

> "To consider loyalty to America as identical with loyalty to Truman, Dulles & U. S. Steel is, to me, the ultimate in sacrilege. Truman, Dulles & U. S. Steel—saboteurs of Americans' constitutional liberties, of peoples' self-government everywhere, of the hopes promised mankind by victory in the last war! Lynchers of Americans and engineers of the doctrine of guns over butter!
>
> * * * * * * * *
>
> "Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people. Loyalty to America today, therefore, must mean opposition to those who are betraying our country's traditions, who are squandering her manpower, her honor and her riches." (California Eagle Article 7:38/50.)

2. Other evidence indicating that petitioner was in sympathy and active association with the Communist Party and its objective to violently overthrow the Government.

Respondents submit that there is no real question that, in the light of this evidence and petitioner's refusal to

amplify his unsupported declaration that he did not advocate the overthrow of the Government or to answer questions allowing the Committee to test his veracity, the Committee could constitutionally determine that he had not established his qualification for admittance to the Bar under Section 6064.1.

Respondents feel that the discussion above amply demonstrates that petitioner has raised no substantial Federal question. However, they wish to direct particular attention to this Court's very recent decision in *Re George Anastaplo.* The factual backgrounds of the *Anastaplo* and Konigsberg cases are very similar. George Anastaplo was refused admittance to the Illinois Bar based largely on his refusal to answer questions concerning his membership in the Communist Party and the Committee's opinion that a member of the Communist Party could not in good faith take the oath to support the Constitutions of Illinois and the United States. (*In re George Anastaplo* (Ill. Sup. Ct., 1954), 121 N. E. 2d 826 at 828.) The Supreme Court of Illinois affirmed the Committee's action on the ground that membership in the Communist Party or known subversive "front" organizations were relevant to the inquiry into petitioner's fitness for admittance to the Bar, and his refusal to answer prevented the Committee from inquiring fully into his qualifications for admittance. It further determined that the Committee's inquiry about petitioner's "political affiliations and organizational memberships" was not unconstitutional as being in derogation of the First and Fourteenth Amendments.

In re George Anastaplo (Ill. Sup. Ct., 1954), 121 N. E. 2d 826.

This Court refused certiorari for want of a substantial Federal question.

Re George Anastaplo (1955), 348 U. S. 946, reh. den. 349 U. S. 908.

Respondents submit that petitioner has, at the most, done no more than re-present the issues raised in *Re George Anastaplo* and there determined by this Court not to present a substantial Federal question.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1956
No. 5

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENT'S BRIEF.

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SUBJECT INDEX

PAGE

I.

Jurisdiction 1

II.

Constitutional provisions and statutes involved 2

III.

Questions presented 3

IV.

Statement of material facts 5

V.

Summary of argument 15

VI.

Argument 18

A. Petitioner's claims under the United States Constitution were not duly raised before the California Supreme Court 18

B. The denial of the petitioner for writ of review by the California Supreme Cort was a final judgment within the meaning of 28 U. S. C., Section 1257 24

C. The determination of the Supreme Court of California was not based upon a rejection of claims arising under the Fourteenth Amendment 27

D. Petitioner was given a full and fair hearing at which he was advised of all evidence considered by the Committee as raising doubts concerning his qualifications for admission and was given every opportunity to dispel such doubts 31

PAGE

E. Every state has broad powers to determine the personnel of its bar. The standards for admission adopted by California in no way infringe petitioner's federally protected rights 35

1. This court will not interfere in a state's selection of personnel for its bar unless a federally protected right has clearly been infringed 35

2. The standards of admission selected by California are constitutional in all respects 37

F. The evidence considered by respondents was relevant to its inquiry whether petitioner was a person of good moral character and could truthfully state that he did not advocate the overthrow of the government by force or violence. There is no constitutional bar to the consideration of such evidence 41

1. Information indicating that petitioner was a member of, and in sympathetic and active association with, the Communist Party was relevant to a determination of good moral character. This relevancy arose from the nature of the activities, objectives, and standards of conduct adopted by the Communist Party 42

2. Information indicating that petitioner was a member of and in sympathetic and active association with the Communist Party was relevant to a determination of whether petitioner advocated the overthrow of the government by force and violence or other unconstitutional means 48

3. Evidence indicating that petitioner's standards of truth, honesty and general morality were deficient was relevant to a determination whether he was a person of good moral character 49

PAGE

4. There is no constitutional bar to consideration of newspaper articles written by petitioner where relevant to respondents' inquiries. Similarly, there is no bar to the consideration of statements made by petitioner to the California Senate Committee on Un-American Activities 51

5. There is no constitutional bar to the consideration of evidence concerning petitioner's association with the Communist Party 53

G. There are no other grounds upon which respondent's action may be reversed 55

1. Burden of proof 55

2. Contention that a political test for admission was retroactively established 60

VII.

Conclusion 61

Appendix:

Constitutional provisions and statutes ..... App. p. 1

California admission procedure ..... App. p. 6

TABLE OF AUTHORITIES CITED

CASES — PAGE

Adams v. Russell, 229 U. S. 353 27
Adamson v. California, 332 U. S. 46 54
Adler v. Board of Education, 342 U. S. 485 53
Admission to Law, In re, 1 Cal. 2d 61 35
American Communications Assoc. v. Douds, 339 U. S. 382 ..... 47, 53
Anastaplo, In re, 3 Ill. 2d 471, 121 N. E. 2d 826; cert. den., 348 U. S. 946; reh. den., 349 U. S. 908 ..... 40, 54
Barsky v. Board of Regents, 347 U. S. 442 60
Black v. Cutter Laboratories, 100 L. Ed. (Adv.) 681 53
Black v. Cutter Laboratories, 351 U. S. 292 29
Bowe v. Scott, 233 U. S. 658 21
Bradley v. Butchart, 217 Cal. 731 20
Bradwell v. Illinois, 16 Wall. (83 U. S.) 130 36
Cassidy, Application of, 51 N. Y. S. 2d 202; aff'd, 296 N. Y. 926, 73 N. E. 2d 41 40
Central Union Telephone Company v. City of Edwardsville, 269 U. S. 190 ..... 18, 23
Chase Securities Corp. v. Donaldson, 325 U. S. 304 60
Cohen v. Wright, 22 Cal. 297 ..... 35, 38
Dennis v. United States, 341 U. S. 494 46
Edelman v. California, 344 U. S. 357 ..... 18, 23, 31
Everts v. Sunset Farms, Inc., 9 Cal. 2d 691 20
Feinstein v. State Bar, 39 Cal. 2d 541 58
Garland, In re, 219 Cal. 661 55
Garner v. Board of Pub. Wks. of Los Angeles, 341 U. S. 716 53
Gerende v. Board of Supervisors, 341 U. S. 56 53
Honeyman v. Hanan, 300 U. S. 14 18
Hulbert v. City of Chicago, 202 U. S. 275 ..... 18, 23, 31
John v. Paullin, 231 U. S. 583 ..... 18, 23
Johnson v. State Bar, 4 Cal. 2d 744 ..... 19, 20
Kepler v. The State Bar, 216 Cal. 52 58
Large v. The State Bar, 218 Cal. 334 61
Lockwood, In re, 154 U. S. 116 36
Lynch v. New York, 293 U. S. 52 ..... 18, 27

PAGE

Martin v. The Law Society, 3 Dominion Law Reports 173....40, 54
Maryland Casualty Co. v. Jones, 279 U. S. 792..... 24
McDonald, In re, 200 Ind. 424, 164 N. E. 261..... 38
Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291....
.....18, 31
National Labor Relations Board v. M. E. Blatt Co., 143 F. 2d
268 52
National Labor Relations Board v. Pick Mfg. Co., 135 F. 2d
329 52
New York ex rel. Bryant v. Zimmerman, 278 U. S. 63..... 22
Orloff v. Willoughby, 345 U. S. 83..... 53
Patterson, In re, 25 U. S. Law Week 2201.....41, 54
Pennekamp v. Florida, 328 U. S. 331..... 51
People v. McLean, 135 Cal. 306..... 19
Rouss, In re, 221 N. Y. 81, 116 N. E. 782..... 35
Salot v. State Bar, 3 Cal. 2d 615.....3, 26
Schware v. Board of Bar Examiners, 60 N. M. 304, 291 P. 2d
607 54
Southwestern Bell Telegraph Co. v. Oklahoma, 303 U. S. 206....
.....18, 27
Spears v. The State Bar, 211 Cal. 183..... 55
State Bar v. Tangert, 43 Cal. 2d 637..... 55
Steinmetz v. Cal. State Board of Education, 44 Cal. 2d 816,
cert. den. 100 L. Ed. (Adv.) 538..... 53
Stembridge v. Georgia, 343 U. S. 541..... 27
Steppay, In re, 15 Cal. 2d 71..... 55
Stevens, In re, 59 Cal. App. 2d 251..... 58
Summers, In re, 325 U. S. 561.....36, 37, 41
Title G. & T. Co. v. Fraternal Finance Co., 220 Cal. 362..... 19
United States v. Orth, 51 Fed. Supp. 682; reversed on other
grounds, 142 F. 2d 969..... 52
Vaughan v. State Bar, 208 Cal. 740..... 58
Webster v. Board of Dental Examiners, 17 Cal. 2d 534..... 20
Wells, In re, 174 Cal. 467..... 55
Wettlin v. State Bar, 24 Cal. 2d 862..... 58
Whitney v. California, 274 U. S. 357..... 19

RULES

PAGE

Rules of the California Supreme Court, Rule 59(b) 24, 26
Rules of the Committee of Bar Examiners, Rule 10 56
Rules Regulating Admission to Practice Law in California, Rule X, Sec. 101 15

STATUTES

California Business and Professions Code, Sec. 6064.1 ..... 6, 12, 13, 28, 59
California Business and Professions Code, Sec. 6065 38
California Business and Professions Code, Sec. 6066 ..... 24, 25
California Business and Professions Code, Sec. 6068 ..... 39, 50
California Constitution, Art. I, Sec. 13 21
California Government Code, Sec. 1027.5 45
Judiciary Act of 1789, Sec. 25 22
64 Statutes at Large, p. 987 44
68 Statutes at Large, p. 775 43
United States Code, Title 28, Sec. 1257 ..... 3, 22, 26
United States Code, Title 28, Sec. 1257(3) 1
United States Code, Title 50, Sec. 781 44
United States Code, Title 50, Sec. 841 (Supp. 1954) 43
United States Constitution, First Amendment 16, 21, 61
United States Constitution, Fifth Amendment 21
United States Constitution, Fourteenth Amendment 3, 16, 21, 38, 61

TEXTBOOKS

28 American Law Reports, p. 1140 38
72 American Law Reports, p. 929 38
2 University of California at Los Angeles Law Review, p. 224 41

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THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENT'S BRIEF.

I.
JURISDICTION.

Petitioner has invoked the jurisdiction of this Court under 28 U. S. C., Section 1257(3). For the reasons set forth in Part VI below, respondents deny jurisdiction on grounds that:

(a) The Federal question was not properly presented to the Supreme Court of California.

(b) Petitioner has failed to establish that the Federal issue was necessary to the decision of the Supreme Court of California.

II.
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

A. THE PROVISIONS OF THE UNITED STATES CONSTITUTION INVOLVED ARE:

1. The First Amendment.
2. The Fourteenth Amendment.

These Amendmens are set out in full in the appendix.

B. THE CALIFORNIA STATUTES INVOLVED ARE:

1. Section 6010—Board of Governors in General.
2. Section 6046—Examining Committee; Powers.
3. Section 6047—Rules and Regulations of Examining Committee.
4. Section 6060—(a), (b), (c) and (d)—Qualification, Examination and Fee.
5. Section 6064—Admission.
6. Section 6064.1—Advocacy of Overthrow.
7. Section 6066—Review of Refusal of Certification.
8. Section 6068—Duties of Attorney.

These sections are set out in full in the appendix.

C. RULES AND REGULATIONS INVOLVED:

1. Rules Regulating Admission to Practice Law in California:

(a) Rule I, Section 2. Committee of Bar Examiners; General Powers.

(b) Rule X, Section 101. Moral Character.

2. Rules on Appeal of the California Supreme Court: (a) Rule 59(b).

These rules are set out in full in the appendix.

III.
QUESTIONS PRESENTED.

Questions relating to the jurisdiction of this Court which counsel were invited to argue in the order allowing certiorari:

1. Were petitioner's claims under the United States Constitution duly raised before the Supreme Court of California?

2. Was the Supreme Court of California's denial of a petition for a writ of review merely a refusal by that court to exercise its descretionary jurisdiction or is it to be deemed a disposition 'in the nature of a review,' *Salot v. State Bar*, 3 Cal. 2d 615, 617, and as such a final judgment within the meaning of 28 U. S. C., Sec. 1257?

3. Assuming the latter, was the determination of the Supreme Court of California based upon a rejection of claims arising under the Fourteenth Amendment of the Constitution of the United States, and more particularly, upon an evaluation of the constitutional significance of the evidence summarized under "1" on page 5 through the top of page 8 of the brief filed by the respondents on December 8, 1955 in opposition to the petition for the writ of certiorari herein?

Questions relating to the application of the Fourteenth Amendment:

4. Was petitioner denied procedural due process.

5. Can California constitutionally require applicants for admission to its bar to be of good moral character and not to advocate the violent overthrow of the government.

6. Could respondents properly determine that the following types of evidence were relevant to determining whether petitioner was a person of good moral character and did not advocate the violent overthrow of the government:

(a) Direct testimony that petitioner was a member of the Communist Party;

(b) Indirect evidence such as petitioner's writings and his appearance before and statements to the California Senate Committee on UnAmerican Activities that petitioner was a member of the Communist Party;

(c) Evidence such as petitioner's writings and his statements to the California Senate Committee on UnAmerican Activities that petitioner's standards of morality were deficient;

(d) Petitioner's failure to explain or deny or produce other evidence with respect to the doubts raised by the above types of evidence.

7. Was there any constitutional bar to considering one or more of the groups of evidence set forth in Question 6 to the extent that such evidence was relevant to the statutory standards for admission.

8. Excluding consideration of any evidence determined under 7 to have been constitutionally privileged, was there sufficient evidence to support the determination of the California Supreme Court that petitioner had failed to establish that he met all statutory standards for admission to the California Bar.

IV.
STATEMENT OF MATERIAL FACTS.

In reviewing petitioner's Application for Examination to Practice Law it became apparent to the Committee of Bar Examiners that serious doubts existed whether petitioner fulfilled the statutory qualifications for admission to the California Bar. In accordance with their standard procedures, respondents invited petitioner to appear before the Southern Subcommittee of the Committee of Bar Examiners and dispel these doubts as to his qualifications. The record on which the determination of the Committee of Bar Examiners and the California Supreme Court were based consists of the transcripts of three hearings before the Southern Subcommittee, the final *de novo* hearing before the full Committee of Bar Examiners, and the exhibits introduced at those hearings.

At all, except the initial Subcommittee hearing, petitioner was represented by counsel. As a reading of the full record would show, numerous matters such as petitioner's general educational and employment background were considered at the hearings which have no substantial effect on the essential issues in this case. For the sake of brevity, in summarizing each of the hearings, respondents will omit reference to such evidence and limit themselves to matters pertaining to the essential areas of doubt.

First Subcommittee Hearing [R. 4-46]:—Petitioner was presented with twenty one photostatic copies of the editorial pages of the California Eagle containing articles purportedly written by him and asked to identify them [R. 8-11]. He was then asked if he had appeared before the Senate Fact Finding Committee on UnAmerican Activities and was asked to identify a written statement which

he made to that Committee [R. 12-15]. In general, petitioner identified both the California Eagle articles and the statement to the Committee as the type of thing he had written.

Petitioner was questioned with respect to certain of his articles:

> "Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as "killers." No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the "American way of life" we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.
>
> "None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attorney-General who denies us the right to bail and tells brother to spy on brother."

He was also questioned with respect to matters in the transcript of the Senate Committee hearings such as participation in organizations characterized as Communist dominated [R. 25-28]. He affirmed membership in some of these organizations and stated that he did not remember with respect to others. The Southern Subcommittee thereupon called petitioner's attention to Business and Professions Code Section 6064.1 whereby they were obliged to inquire into Communist associations as relevant to whether he advocated the violent overthrow of the government, and asked him whether he was a Communist. He refused to answer stating, among other things, that whatever he answered the Committee "would get a dozen

informers who would say the opposite" [R. 29]. He also took the position that the Committee had no right to ask the question.

Mrs. Alice King Bennett was then called before the Committee and testified at some length that she knew petitioner as a fellow member of a small unit in the Communist Party [R. 42, *et seq.*]. (Mrs. Bennett was allowed to testify at the first hearing with the understanding that petitioner intended to obtain counsel for future hearings and would at that time be given full opportunity to cross-examine her.) [R. 44].

Second Subcommittee Hearing [R. 46-85]:—Mrs. Bennett was cross-examined by counsel for petitioner and reaffirmed her identification of petitioner as an active member of the Communist Party [R. 48-57]. Petitioner was again called to testify. He volunteered that he had reviewed his California Eagle articles, that the articles introduced by the Subcommittee at the previous hearing were written by him, and himself introduced into evidence a complete set of his California Eagle articles together with certain other articles which he had written at various times in the past [R. 60, *et seq.*]. Petitioner raised the question of character witnesses and it was agreed that their testimony would be submitted in the form of written statements [R. 70-71].

Petitioner was then again questioned regarding his present and past affiliations with the Communist Party and refused to answer based on the First Amendment [R. 71, *et seq.*].

Third Subcommittee Hearing [R. 86-96]:—Letters of reference were presented on behalf of petitioner and introduced as applicant's Exhibit E [R. 88-92]. A sum-

mary of petitioner's position was made by his counsel [R. 93, *et seq.*].

Petitioner's qualifications were taken under submission by the Southern Subcommittee which determined that he had failed to establish his qualifications for admission [R. 131]. Petitioner thereupon appealed for a *de novo* hearing before the full Committee.

Hearing Before The Full Committee [R. 96-130]:— The record before the Southern Subcommittee and the exhibits which had been introduced were incorporated as part of the record before the full Committee [R. 97]. No attempt will be made to set out a full summary of these exhibits but the following brief quotations from the California Eagle articles [Committee Ex. 1, p. 133, *et seq.*][1] illustrate the type of statement which the Committee felt obliged to consider and inquire into:

"THE VATICAN'S POLITICAL POWER

* * * * * * * *

"When Belgium, France and Holland were conquered 'the Vatican ordered the German hierarchy to say prayers of thanksgiving in all German Catholic Churches for the Fuehrer.'

"And the Pope opened secret-negotiations with Hitler for a new Concordat—an agreement with Hitler in which, in return for a privileged position for the Church in the New Germany and 'whatever

---

[1]In the record presented to this Court the full set of California Eagle articles are designated as Committee Exhibit 1. Actually the full set of articles were introduced at the hearings as petitioner's exhibit, and the Committee exhibit consisted of only 21 of these articles on a format showing the entire California Eagle page in which they appeared. The Committee exhibit is not part of this record.

German armies conquered,' the Hierarchy would 'make itself indispensable to the nation for the victorious conclusion of the war.' In January 1941 the German bishops in an official statement expressed the hope that they 'shall be allotted a share in the internal reconstruction of the Greater Reich. . . .'

"No Help to the Allies

"As Nazi armies ravaged vast areas of the USSR, the Vatican advised the national hierarchies throughout the world, even in the Allied countries, 'to support the military campaign against the Godless Russians. . . .'

"But when the Soviet Union began to counter-attack, the Vatican tried desperately to keep the USA and Great Britain from aiding our Ally and to 'find a means of preventing Russia from advancing westwards.'" [R. 150-151.]

* * * * * * * *

"The Cesspool

* * * * * * * *

"Traitor! Traitor!

"Betrayal is in the air. Judges, with impunity, violate our constitutional rights—and editors honor them for it. Stool pigeons are the new national heroes, and hypocrisy has been raised to the level of national policy.

"The president violates his oath of office by dragging us into war—and the nation's spiritual leaders applaud. . . ." [R. 154-155.]

* * * * * * * *

"Some Notes On
WESTERN CIVILIZATION

* * * * * * * *

"A reference, perhaps, to Washington's coming to the rescue of the French killers of the Viet-Namese patriots by agreeing to finance that 'dirty war,' just as we're still financing the ogre Chiang's murder of innocent Chinese.

"While the 'big three' approve a new German army and Germany's manufacture of explosives—as the Jewish communities there are forced to form defense organizations again, only five short years after V-E Day.

* * * * * * * *

"Exposing their moral, spiritual and intellectual bankruptcy, the bipartisan beasts, diseased with colossal conceit and contempt for the people, demonstrate they are trying to make civilization over in their own image—a devil's amalg-m of hypocrasy and brutality, idolization of property, want and agony, betrayal and filth, lies and death." [R. 162-163.]

* * * * * * * *

"The Greater Loyalty

* * * * * * * *

"To consider loyalty to America as identical with loyalty to Truman, Dulles & U. S. Steel is, to me, the ultimate in sacrilege. Truman, Dulles & U. S. Steel—saboteurs of Americans' constitutional liberties, of peoples' self-government everywhere, of the hopes promised mankind by victory in the last war! Lynchers of Americans and engineers of the doctrine of guns over butter!

* * * * * * * *

"Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people. Loyalty to America today, therefore, must mean opposition to those who are betraying our country's traditions, who are squandering her manpower, her honor and her riches.

* * * * * * * *

"They can't jail us all. They may succeed in driving many of the best Americans into exile—to form, on a friendlier soil, a government-in-exile for a Free America. But this will not happen if we fight back now . . . . as heroically as Americans fought the British and their Tories in our first revolution . . . as boldly as Americans fought the slaveholders and their Copperheads in our second revolution. . . ." [R. 213, *et seq.*]

"THE GANGSTERS, INCORPORATED

* * * * * * * *

"No Comparison

"Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as 'killers.' No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the 'American way of life' we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.

"None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attor-

ney General who denies us the right to bail and tells brother to spy on brother." [R. 246.]

Petitioner stated his position to the Committee [R. 98-106] in which, among other things, he stated that the Committee's inquiry into good moral character under California Law was limited to "the presence or absence of conduct of a criminal nature, conduct involving moral turpitude" and that under Business and Professions Code Section 6064.1 the Committee could inquire whether petitioner personally advocated the violent overthrow of the government but once this question was asked and answered, could not inquire further.

The Committee attempted to inquire into the organizations to which petitioner belonged but petitioner took the position, on the basis of the First Amendment, that the Committee was not entitled to know what organizations he belonged to or with whom he associated [R. 109]. Petitioner was presented with his testimony before the Tenney Committee [Committee Ex. 2; R. 109] and asked if there was anything therein which he wished to change or correct. He stated that this testimony reflected his general position today [R. 110].

Petitioner was next questioned concerning certain of his California Eagle articles [R. 110, *et seq.*]. He answered general questions with respect thereto, such as whether he wrote the articles and believed they were true when written. He refused, on the basis of the freedoms of speech and press, to state his beliefs with regard to these articles today or whether he had any evidence to

support them now or at the time they were written. Petitioner was questioned with respect to Mrs. Bennett's testimony concerning his membership in the Communist Party [R. 117, *et seq.*]. He refused to deny any part thereof on the ground that it related to his political beliefs. He again refused to answer any questions with respect to his present or past membership in the Communist Party. He also reiterated his position with respect to the Committee's power to inquire under Business and Professions Code Section 6064.1:

> "Mr. Whitmore: It is not your contention, is it Mr Konigsberg, that the only basis which the Committee may rely on in determining whether or not it can certify you under the provisions of 6064.1 is by asking you the questions and getting a yes or no answer. It is not your position that that is the extent of the right of this body in making its determination under 6064.1?
>
> Mr. Konigsberg: In essence, that is it. My interpretation (fol. 204) of that code section is simply that it sets the limit as to whatever questions relating to opinion—because that is obviously a political issue—there may be asked by the Bar Examiners. It sets the limit as I interpret it. I may be wrong, as I think the SubCommittee is wrong; because of the history of this act as I have related it the Committee can only ask 'Do you now personally advocate the overthrow of the government of the United States or of this State by force or violence or other unconstitutional means' and if I say 'No,' 'Yes' or whatever it may be, that is as far as you can go; that is without raising the question on this point (which

I don't think is pertinent) as to whether that is even constitutional under the First Amendment.

Mr. Whitmore: You are saying that the Committee is precluded under Section 6064.1 from considering acts or omissions of yours in the past with respect to that problem?

Mr. Konigsberg: Yes, I think so. I am saying they can only ask do I advocate the overthrow by force or violence or other means." [R. 125-126.]

Petitioner was given the opportunity to file any additional authorities or memoranda of position which he wished [R. 129] and the hearing was closed.

The Committee of Bar Examiners considered all of the evidence before them, including the conduct and demeanor of the witness and issued their written determination that petitioner could not be certified for admission to the California Bar because he had failed to bear the burden of proving:

1. That he was a person of good moral character, and

2. That he did not advocate the violent overthrow of the government.

Applicant thereafter petitioned the Supreme Court of California for review, which review was refused without opinion, thus affirming the determination of the Committee of Bar Examiners that petitioner had failed to establish his qualifications for admittance to the California Bar.

V.

SUMMARY OF ARGUMENT.

California requires that an applicant for admission to its Bar establish:

1. He is a person of good moral character, and

2. He does not advocate violent overthrow of the state or Federal government.

The Committee of Bar Examiners is charged with the statutory duty of reviewing each applicant's qualifications for admission to the California Bar. Since, as a practical matter, it would be impossible for the Committee to conduct a detailed investigation of each applicant, or even of those applicants where doubts arise, it has long been the Committee's practice to require each applicant to establish his good moral character by removing all reasonable doubts:

> "* * * The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."
>
> Rule X, Sec. 101, Rules Regulating Admission To Practice Law in California (see Appendix).

This procedure has been affirmed on numerous occasions by the California Supreme Court which has emphasized the necessity of candor and full disclosure by each applicant. A similar procedure is followed with respect to

whether an applicant advocates the violent overthrow of the government.

Evidence before the Committee of Bar Examiners from three independent sources, including the direct testimony of a responsible witness, indicated that petitioner was in active and sympathetic association with the Communist Party. There was also evidence through petitioner's public statements and newspaper articles directly indicating that his moral standards were deficient. In view of the established nature of the Communist Party, each of these sources properly raised serious doubts whether petitioner was a person of good moral character and whether he honestly stated that he did not advocate the violent overthrow of the government. Such doubts were reasonable and if not dispelled by contrary evidence would prevent petitioner from meeting the burden of proof required by California law. Petitioner refused to present other evidence, even his own testimony, directed to these areas of doubt and hence failed to establish his qualifications for admittance to the California Bar.

The essence of petitioner's position, as we understand it, is that all of this evidence related solely to political opinions, ideas and associations or was contained in statements published or spoken by him and that his rights under the First and Fourteenth Amendments were violated by considering such evidence or asking questions with respect thereto. In other words, the Committee may not consider or inquire into petitioner's past associations or

anything that he has said or published. Respondents submit that no such constitutional privileges exist. Numerous decisions of this Court affirm that both past and present associations may properly be considered as evidence of present fitness. As many of these same decisions affirm, this rule is not changed by the fact that petitioner chooses to call the Communist Party and similar groups "political" associations.

Similarly, petitioner's past oral and written statements may be considered. His right to make such statements is unchallenged. But, where such statements evidence association with the Communist Party or reflect deficient moral standards they may be considered.

Finally, even were this Court to hold that one or more of these sources were constitutionally privileged (which we doubt it will do), there is ample evidence from the remaining sources to justify the determination made by respondents and affirmed by the California Supreme Court.

VI.

ARGUMENT.

A. Petitioner's Claims Under the United States Constitution Were Not Duly Raised Before the California Supreme Court.

This court has repeatedly held that it has no jurisdiction to review the decision of a state court unless the petitioner has affirmatively shown that the Federal claim or question was properly presented to the highest court of the state having jurisdiction.

Lynch v. New York, 293 U. S. 52;

Honeyman v. Hanan, 300 U. S. 14;

Southwestern Bell Telegraph Co. v. Oklahoma, 303 U. S. 206.

In order for a question to have been properly presented to the higest court of the state, it must have been presented and preserved in the manner prescribed by the appellate practice of the state. If this was not done, this court has no jurisdiction.

Edelman v. California, 344 U. S. 357, 358;

John v. Paullin, 231 U. S. 583;

Central Union Telephone Company v. City of Edwardsville, 269 U. S. 190;

Hulbert v. City of Chicago, 202 U. S. 275;

Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291.

It is well established California practice that a question is not properly presented and need not be considered by the California Supreme Court unless it is specifically set forth for the consideration of the Court and is supported by written argument and citation of authori-

ties in Petitioner's brief before the California Supreme Court.[2]

People v. McLean (1902), 135 Cal. 306.

"We again repeat what we have said before, that we will not examine alleged errors presented in this way. It is due to this court from the members of the bar to point out clearly and concisely the rulings complained of as erroneous and the reasons why they are so, with reference to authorities, if any. In case counsel will not take the trouble to do so, we shall deem the matter as of not sufficient importance to merit notice in an opinion (*People v. Woon Tuck Wo*, 120 Cal. 297)."

People v. McLean, 135 Cal. 306, 309.

Title G. & T. Co. v. Fraternal Finance Co., 220 Cal. 362.

"Appellate courts will notice only those assignments pointed out in the brief of an appellant, all others are deemed to have been waived or abandoned. * * *"

Title G. & T. Co. v. Fraternal Finance Co., 220 Cal. 362, 363.

Johnson v. State Bar, 4 Cal. 2d 744.

"With respect to the constitutionality of the act, petitioner says it is unconstitutional, without the citation of authority or an argument other than an attack upon the methods of The State Bar. It is a

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[2]For obvious reasons, in criminal cases the California courts generally depart from this practice and will correct any error coming to their attention. However, as was pointed out by Mr. Justice Brandeis in a concurring opinion in *Whitney v. California*, 274 U. S. 357, 380, even in a criminal case this Court does not have a similar power to reverse on the basis of an issue not briefed in the California courts.

rule, well settled, that such a presentation of the subject is insufficient to require us to pass upon the points suggested. * * *"

Johnson v. State Bar, 4 Cal. 2d 744, 758.

Everts v. Sunset Farms, Inc. 9 Cal. 2d 691.

"The defendants' points 8, 9, 10 and 11 are stated, but no part of the record is quoted, no authorities are cited, and no argument is set forth in support of any one of said points. Under such circumstances a court of review will not search a record for the purpose of finding something on which to base an order of reversal."

Everts v. Sunset Farms, Inc., 9 Cal. 2d 691, 700.
Bradley v. Butchart, 217 Cal. 731.

"* * * 'An appellate court cannot assume the task of discovering the error in a ruling and it is the duty of counsel by argument and the citation of authority to show the reasons why the rulings complained of are erroneous. Contentions supported neither by argument nor by citation of authority are deemed to be without foundation and to have been abandoned.' (2 Cal. Jur. 732; *People v. McLean*, 135 Cal. 306 [67 Pac. 770]; *People v. Broyles*, 113 Cal. App. 390 [298 Pac. 131].)"

Bradley v. Butchart, 217 Cal. 731, 747.

Webster v. Board of Dental Examiners, 17 Cal. 2d 534.

In petitioner's reply brief supporting his petition for certiorari, he sets forth all of the instances in which he alleges that he raised the Federal issue before the California Supreme Court as follows:

1. *Committee Hearings*:—On a number of occasions at the Committee and Subcommittee hearings he refused

to answer questions on the basis of a claimed right under the First Amendment not to answer such questions. In a single instance he asserted that refusing him admission without informing him of any findings of fact infringed his rights under the Fourteenth Amendment. It would seem clear that raising a constitutional issue at the Committee hearings is not equivalent to raising it before the California Supreme Court.

2. *Petition to California Supreme Court to Review Denial of Admission:*—Petitioner summarily contended in Points 9 through 11 that denial of his application violated his rights under the First, Fifth and Fourteenth Amendments.

3. *Briefs Before the California Supreme Court:*—

(a) The summary of facts included a statement that when the Committee asked if he were a member of the Communist Party he declined to answer on the ground that this invaded his constitutional rights under the First Amendment.

(b) At page 41 of the argument a single phrase, following two pages of argument why failure to advise applicant of the nature of the information against him was in error under California law, indicated that this also denied him due process. This was not supported by any additional argument why or how he was thereby denied due process or by any citation of authorities. Moreover, since California has a due process clause (Cal. Const. Article I, Section 13), under the decision of this Court in *Bowe v. Scott*, 233 U. S. 658, reference to due process without specifying that the Federal Constitu-

iton is being referred to will be deemed to relate to due process under the California Constitution.

It would seem to be beyond dispute that the above claims were insufficient to raise even a single Federal Constitutional issue in the manner required by California law.

Petitioner argues (Pet. Br. p. 18 *et seq.*) that under Section 25 of the Judiciary Act of 1789 (now 28 U. S. C., Sec. 1257), it is not necessary to specifically set forth the constitutional grounds on which you rely. It is our understanding of such cases that they refer to situations where the constitutional issue was actually before the court though not presented in precise constitutional language. They are not intended to apply where, as here, it is not the degree of preciseness with which the constitutional issues were framed and argued, but the failure to argue them at all which is objected to. However, even assuming that we give petitioner's authorities the broad construction which he urges and assume that the brief references in his petition were sufficient to frame the constitutional issue, he thereafter failed to preserve it as required by California law—*i.e.*, he failed to argue it in his briefs with appropriate citation of authorities where available. Petitioner's own authorities—*e.g.*, *New York Exrel Bryant v. Zimmerman*, 278 U. S. 63, 68-71—recognize that the rule they state whereby this Court will accept jurisdiction even though the constitutional issue was not stated with precision do not apply unless the state requirements have been met. Since petitioner's brief contained no argument of the constitutional issue and no citation of supporting authorities, he failed to meet the state requirements in presenting the constitutional issue to the

California Supreme Court. The United States Supreme Court therefore has no jurisdiction.

Edelman v. California, 344 U. S. 357, 358;

Hulbert v. City of Chicago, 202 U. S. 275;

John v. Paollin, 231 U. S. 583, 585;

Central Union Telephone Company v. City Edwardsville, 269 U. S. 190, 194-195.

The only limitation on this rule is that the state procedure provides a reasonable opportunity for the constitutional issue to be heard. It scarcely need be added that the California procedure requiring the point not only to be raised but to be briefed, argued and supported with authorities wherever available, does not deny a reasonable opportunity for the issue to be heard.

Hulbert v. City of Chicago, 202 U. S. 275, 281.

[Illinois practice regarded errors assigned but not noticed or relied on in the brief or argument as waived or abandoned.]

It may be noted that the above discussion gives petitioner the full benefit of all references which he claims to have made to his rights under the Federal Constitution, including those in his brief before the California Supreme Court. We feel that this is appropriate since the briefs of both petitioner and respondents before this Court have discussed and admitted the extent to which the briefs before the California Supreme Court referred to the constitutional issues. Moreover, the California Supreme Court briefs were designated by petitioner as part of the record, were not objected to by respondents, and were duly certified to this Court by the California Supreme Court.

However, were petitioner's argument accepted so that *Maryland Casualty Co. v. Jones*, 279 U. S. 792, was applied to prevent consideration of either the California Supreme Court briefs or concessions in the briefs before this Court with respect thereto, it does not strengthen petitioner's case. It is the affirmative duty of petitioner to establish that he duly presented the constitutional question to the State Supreme Court in accordance with its procedure. Whether or not petitioner's brief in the California Supreme Court may be considered, he has not, and cannot establish that this was done.

B. The Denial of the Petitioner for Writ of Review by the California Supreme Court Was a Final Judgment Within the Meaning of 28 U. S. C., Section 1257.

California Business and Professions Code Section 6066 provides:

> "§6066. *Court review of refusal to certify examined applicant.* Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court."

Rule 59(b) of the Rules of the California Supreme Court provides:

> "A petition to the Supreme Court to review any other action of the Board of Governors of The State Bar, or of any committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act shall be filed within 60 days after written notice of the action complained

of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of The State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service on the Board of Governors of 3 copies of the petition and the brief. Within 10 days after service of the petition, the Board of Governors may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered the Board of Governors, at least 20 days before the return day, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which 3 copies shall have been served on the Board of Governors."

Petitioner herein (Pet. Br. pp. 22-24) concludes that the decision of the State Supreme Court herein was final. Respondents concur in that conclusion but since jurisdiction does not depend upon agreement, we submit the following additional factors.

The Order of the California Supreme Court stated that the petition for Writ of Review was denied, with three members of the Court indicating their belief that the Writ should issue [R. 132]. On its face this could be taken as merely a refusal by the Court to exercise its discretionary jurisdiction. However, Section 6066 of the Business and Professions Code, *supra*, which is the statute as distinct from the Rule, provides that an aggrieved applicant ". . . may have the action of the Board . . . reviewed by the Supreme Court . . ." This appears to be a right, and not merely a privilege of asking for a review, leaving only the procedure to be prescribed by the Court.

This Court, in its Order granting the Writ of Certiorari herein referred to *Salot v. The State Bar,* 3 Cal. 2d 615. This case does not appear to involve a review under the statute above quoted nor to come under Rule 59(b), but is described in the opinion as a proceeding for admission to practice as an attorney at law notwithstanding a lack of certification by the Committee of Bar Examiners. The opinion describes the mechanics there adopted which are the traditional steps with respect to a discretionary Writ, using the normal terminology. In that case an Order to Show Cause was issued and upon such order the respondent Bar filed its return and presented the record. On the merits the petition was dismissed.

The *Salot* case was a direct appeal to the inherent power of the Court over the members of the Bar irrespective of the statute and Rule above noted. It did, in form and substance, involve an appeal to the discretionary powers of the Court, and cannot be taken as a direct parallel to the procedure involved herein, brought under the statute and in accordance with the Rule. In the present case, as petitioner notes (Pet. Op. Br. p. 32) the State Supreme Court had before it the entire record in the first instance, and the references in the briefs of the parties were to that record.

Under such circumstances Respondents feel that the action of the California Supreme Court was an acceptance and approval of the action of the Committee of Bar Examiners as set forth in the record, and was a final judgment within the meaning of 28 U. S. C., Section 1257. The fact that Petitioner here might have adopted and might still adopt the entirely different approach indicated in *Salot v. State Bar, supra,* does not militate against the finality of the present order of the State Supreme Court.

C. The Determination of the Supreme Court of California Was Not Based Upon a Rejection of Claims Arising Under the Fourteenth Amendment.

It is well established that this Court's jurisdiction cannot be founded upon a mere surmise that the State Court's decision turned upon a Federal question. It must appear affirmatively from the record or by fair implication that the judgment as rendered could not have been given without deciding the Federal question.

Southwestern Bell Telephone Co. v. Oklahoma, 303 U. S. 206;

Lynch v. New York, 293 U. S. 52;

Adams v. Russell, 229 U. S. 353.

This petition, therefore, should be disposed of by the basic rule, wisely adopted and consistently followed, that this Court will not take jurisdiction to review a judgment of a state court where the judgment could have rested on either a Federal or a state ground.

As was stated in *Stembridge v. Georgia*, 343 U. S. 541, 547, 548:

"* * * Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment.

* * * * * * * *

"* * * We are without jurisdiction when the question of the existence of an adequate state ground is debatable. Batchtel v. Wilson, 204 US 36, 51 L ed 357, 27 S Ct 243."

Stembridge v. Georgia, 343 U. S. 541, 547, 548.

In the present case not only has petitioner failed to affirmatively establish, as he must, that the decision of the California Supreme Court was based upon a rejection of the claims arising under the Federal Constitution, but, on the contrary, the record provides convincing evidence that the decision not only could have been, but in fact was, based upon adequate state grounds.

Petitioner's brief before the California Supreme Court argued the following points:

1. Applicant sustained his burden of proving good moral character. Under this heading he argued that good moral character should be construed as limited to criminal conduct and not to include activities such as those of petitioner, but in no way suggested that it was constitutionally improper to consider any such activities.

2. The burden of proof under Business and Professions Code Section 6064.1 falls upon the Committee of Bar Examiners not on the applicant.

3. If the burden of proof under Section 6064.1 is on the applicant, petitioner's evidence outweighed that of the Committee so that he sustained the burden of proof.

4. The Committee erred under its own rules by not advising petitioner of the evidence against him.

These same points were again argued in petitioner's reply brief before the California Supreme Court. Like his opening brief, the reply brief failed to explicitly or implicitly raise any constitutional argument.

Respondents submit that it could therefore be assumed that the California Supreme Court rested its decision on

the points argued by petitioner and not upon the constitutional issues which he now seeks to raise.[3]

In granting the writ of certiorari, this Court particularly invited counsel's attention to the evidence summarized at pages 5 through 8 of respondents' brief in opposition to the petition for the writ of certiorari. We assume that this reference broadly includes all of petitioner's California Eagle articles whether considered as indirect evidence of his Communist Party affiliation or directly for their reflections on the standards of morality he had adopted and hence on his good moral character.

Such articles were given serious consideration by respondents as relevant to good moral character and, to a lesser extent, with respect to advocacy of violent overthrow of the government. As is set forth in subsection F, below, respondents firmly believe that consideration of such articles in no way infringed petitioner's constitutional rights. However, whether or not this is true, two points would seem beyond dispute:

1. Petitioner at no time objected to the introduction or consideration of these articles.[4] The issue of whether his rights were thereby infringed is therefore not properly before this Court.

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[3]The recent decision of this Court in *Black v. Cutter Laboratories*, 351 U. S. 292 held that construing the term "just cause" in an employment contract to include membership in the Communist Party involves the construction of a contract under local law and does not raise a Federal question. Construing "good moral character" as allowing consideration of evidence of Communist associations, etc., similarly involves a question of local law and does not raise any substantial Federal question.

[4]On numerous occasions petitioner refused to answer questions with respect to these articles on the ground that the questions infringed his constitutional rights, but he did not extend his objection to the articles themselves.

2. There was ample evidence to sustain the California Supreme Court's determination without any consideration being given to the California Eagle articles or any questions asked with respect thereto. Indeed, the direct testimony of Mrs. Bennett that petitioner was an active member of the Communist Party, coupled with petitioner's refusal to explain, deny or produce any relevant evidence to refute, is in itself fully sufficient to support the California Supreme Court's determination that petitioner had failed to establish his good moral character. Even more clearly such evidence is sufficient to warrant refusing to believe petitioner's unsupported statement that he did not advocate the violent overthrow of the government.

Thus, even were this court to feel, contrary to the law as we understand it, that it was constitutionally improper for respondents to consider petitioner's newspaper articles, there is nothing to indicate that the decision of the California Supreme Court rested on such evidence and, on the contrary, it would seem clear that there were ample independent grounds on which the California Supreme Court's decision could and did rest.

Moreover, as set forth in more detail in subsection A, *supra*, petitioner failed to raise the Federal constitutional issues in the manner required by California procedure in that he failed to specifically set forth the constitutional issues and support them with arguments or authorities.

Such noncompliance with the local procedure is an adequate state ground upon which the decision of the California Supreme Court can rest. This court has consistently held that where such a ground exists, this Court will not take jurisdiction unless the highest court of the state issued an opinion and the opinion affirmatively

showed that the constitutional issues were considered and passed upon despite the failure to follow local procedure. This was not done here.

Edelman v. California, 344 U. S. 357;

Hulbert v. City of Chicago, 202 U. S. 275;

Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291.

Respondents submit that for the reasons set forth above the writ should be discharged as improvidently granted.

D. Petitioner Was Given a Full and Fair Hearing at Which He Was Advised of All Evidence Considered by the Committee as Raising Doubts Concerning His Qualifications for Admission and Was Given Every Opportunity to Dispel Such Doubts.

Petitioner has seen fit to convey the impression that respondents treated him with something less than complete fairness. Thus, he suggests that the Committee retained evidence raising doubts as to his moral fitness in its files for three long years during which time it allowed him to study law at great personal sacrifice and then capriciously or deliberately called him before it for hearing just sixteen days before he was scheduled to take the Bar examination (Pet. Br. 11, 37). Subsequently (Pet. Br. 53-55), he suggests that the procedure adopted by the Committee denied him procedural due process through failing to advise him of the evidence against him or informing him wherein he failed to meet his burden of proof. Since the fairness with which petitioner was treated necessarily permeates all issues in this case, respondents feel it necessary to specifically meet these suggestions even though even a cursory examination of the record shows that they are without basis:

1. *Time of Review:*—Respondents have set forth their general admission procedure in the Appendix. For the reasons there set forth it is necessary to make the determination with respect to standards such as good moral character and advocating the violent overthrow of the government during the four-month period between the time an applicant files for admission to the Bar and the date he takes the Bar examination. This question arose at the hearings and petitioner was advised of the California procedure [R. 107-109]. It is somewhat surprising that he now sees fit to again imply that the Committee acted arbitrarily or improperly in this respect.[5]

2. *Committee Hearings:*

(a) *Petitioner Was Advised of All Adverse Information Considered by the Committee:*—Respondents will not attempt to discuss whether, as suggested by petitioner, procedural due process requires the applicant to be advised of all adverse evidence. Whether or not such a constitutional requirement exists, the Committee's rules and practices so require and petitioner was fully advised of all evidence considered by the Committee as having any adverse bearing either on his good moral character or his advocacy of violent overthrow of the government. Like any other trier of fact, the Committee properly considered intangibles such as the demeanor of the witnesses at the hearings. But, with this exception, all evidence con-

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[5]Petitioner has not mentioned the numerous small courtesies extended to him by the Committee. For example, at his request the hearings were adjourned until after the Bar examination and he was given special permission to take the exam even though he had not yet established his qualifications to do so. Moreover, he claimed that he had a muscular condition which would handicap him were he required to write or type the examination in the normal manner and was granted permission to dictate his answers to a professional typist.

sidered was formally presented at the hearings and appears in the record. The principal sources of doubt were:

(1) Testimony of Alice King Bennett that petitioner was an active member of the Communist Party [R. 42-57].

(2) California Eagle articles written by the petitioner [Com. Ex. 1; R. 133; R. 8-11, 97, *et seq.*].

(3) Petitioner's testimony before and statement to the California Senate Fact Finding Committee on UnAmerican Activities [Com. Exs. 2 and 3; R. 247, 256; R. 12-15, 97, *et seq.*].

(4) Questions by the Committee giving petitioner every opportunity to deny, explain, comment on, or supplement any of the other evidence presented, and petitioner's answers or refusals to answer these questions.

(b) *Petitioner Was Advised Wherein He Was Failing to Meet the Burden of Proof:*—Petitioner cites no authority for his assertion that procedural due process required the Committee to advise him that he was failing to meet the burden of proof or in what particulars he might meet this burden of proof. Respondents are clearly of the opinion that there is no such constitutional requirement. However, were there such a requirement, the record shows that it was met. Not only were the areas of doubt made amply clear by the evidence introduced and the questions asked, but the record is replete with attempts by Committee members to advise petitioner of their position and wherein he was failing to meet the burden of proof. Thus respondents repeatedly advised petitioner that they felt they had a right to inquire into the nature

and extent of his association with the Communist Party and that he was jeopardizing his right to admittance to the Bar by refusing to answer such questions; that as an applicant seeking admission to the Bar, the burden of proof was on him to establish his qualifications and that his refusals to answer were preventing this; that the Committee did not agree with his position that he had a constitutional privilege not to answer; that the Committee did not agree with his contentions as to the scope of their inquiry into good moral character and advocacy of violent overthrow of the government under California law, etc. [R. 28-29, 30, 34, 35-37, 76, 78, 113, 116, 118, 122, 123-124, 127].

3. *Petitioner Was Given a Full and Fair Hearing:*— It is impossible to review the record without being fully aware of the fairness extended to Mr. Konigsberg at all times. Indeed this fairness was voluntarily commented upon by petitioner's own counsel towards the end of the Committee hearing:

> "Mr. O'Donnell: There was some suggestion that the Subcommittee was not fair at the previous hearings.
>
> "Mr. Mosk: May I interrupt immediately. There was no inference in any comments made by Mr. Konigsberg or myself. They were solely directed to the decision of the Subcommittee and our disagreement with the ultimate results. The Committee was absolutely fair and treated Mr. Konigsberg and myself with the utmost degree of fairness and impartiality. We have no complaints about the Subcommittee."

Respondents submit that petitioner's assertion that he was denied procedural due process is completely without merit.

E. Every State Has Broad Powers to Determine the Personnel of Its Bar. The Standards For Admission Adopted by California in No Way Infringe Petitioner's Federally Protected Rights.

1. This Court Will Not Interfere in a State's Selection of Personnel for Its Bar Unless a Federally Protected Right Has Clearly Been Infringed.

Most courts have referred to the practice of law as a "privilege" rather than as a "right" in order to emphasize the power of the state to impose reasonable conditions upon it.

As was once stated by Mr. Justice Cardozo:

> "Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. * * *. (Citing cases.) Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness * * *."
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> *In re Rouss*, 221 N. Y. 81, 116 N. E. 782;
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> *In re Admission to Law* (1934), 1 Cal. 2d 61, 67;
>
> *Cohen v. Wright* (1863), 22 Cal. 297, 319.

Petitioner has argued at some length that the practice of any profession, including law, is a right. Lest the real issue be thus obscured, Respondents submit that it is unimportant whether the label "right" or "privilege" is applied. Petitioner cannot deny that the primary responsibility for selecting the personnel of its Bar rests

with the State of California and that California may prescribe the conditions under which admission will be allowed. Respondents for their part freely admit that in prescribing and applying these conditions, California must give every applicant a fair opportunity to establish that he meets these conditions and may not impose conditions which are either manifestly arbitrary and unfair or are in unlawful contravention of a federally protected right, such as freedom of religion or freedom of speech. The only questions which should be at issue is the breadth of the constitutional restrictions upon California's undisputed right to prescribe qualifications for members of its Bar.

Selection of the personnel of its Bar is a matter which is peculiarly within the cognizance of each state. Not only are attorneys officers of the court, but they occupy a peculiar position of trust and leadership within the state. Every year hundreds of applicants throughout the country are refused admission to the Bars of the various states because they fail to establish that they possess the qualifications required for admission. The limited extent[6] to which this court will interfere is well illustrated by *Re Summers*, 325 U. S. 561, where the Committee of Character Fitness for the State of Illinois refused to

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[6]Though petitioner suggests it would jar the sensibilities and mores of our time to deny admission to the Bar based on a person's sex (Pet. Br. 39), and we wholeheartedly agree, it is interesting to note that this Court has twice refused to interfere with state action refusing admission to the Bar on this basis.

Bradwell v. Illinois, 16 Wall (83 U. S.) 130;
Re Lockwood, 154 U. S. 116.

certify applicant's moral character and fitness because he was a conscientious objector whose beliefs forbade his using force to prevent wrong. He could not therefore swear in good faith to support the Illinois Constitution because he was unwilling to do so by force of arms. It was not disputed that his belief was sincere and that it was based on his religion, nor was it disputed in all other respects that he was fully qualified to practice law. This court refused to reverse the action taken by Illinois:

> "The responsibility for choice as to the personnel of its bar rests with Illinois. Only a decision which violated a federal right secured by the Fourteenth Amendment would authorize our intervention. It is said that the action of the Supreme Court of Illinois is contrary to the principles of that portion of the First Amendment which guarantees the free exercise of religion. Of course, under our Constitutional system, men could not be excluded from the practice of law, or indeed from following any other calling, simply because they belong to any of our religious groups, whether Protestant, Catholic, Quaker or Jewish, assuming it conceivable that any state of the Union would draw such a religious line. We cannot say that any such purpose to discriminate motivated the action of the Illinois Supreme Court."
>
> *Re Summers*, 325 U. S. 561, 570, 571.

2. The Standards of Admission Selected by California Are Constitutional in All Respects.

Petitioner has been refused admission to the California Bar because he failed to establish:

(a) That he is a person of good moral character, and

(b) That he does not advocate the violent overthrow of the Federal government or that of the State of California.[7]

It has long been established that an applicant for admission to practice law may be required to be a person of good moral character.

Cohen v. Wright, 22 Cal. 297;

Re McDonald, 200 Ind. 424, 164 N. E. 261.

Cases Collected:

28 A. L. R. 1140;

72 A. L. R. 929.

It is, of course, up to the courts of each state to define good moral character, subject to review by this court should the definition given violate a right protected under the Fourteenth Amendment.[8]

The definition adopted in California stresses elements of honesty, fairness and respect for the rights of others and for the laws of the state and nation. Business and

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[7]An additional ground never specifically relied on by respondents but on which the California Supreme Court's determination could rest is that it properly had doubts whether petitioner could honestly take oath of allegiance required by Business and Professions Code Section 6065.

[8]Petitioner has discussed at some length (Pet. Br. 42, *et seq.*) the definition which he feels should be given to good moral character and which we note includes many of the elements considered by respondents. However, it should be stressed that the definition adopted by respondents has been affirmed by the California Supreme Court so that the question before us now is not how good moral character should be defined, but whether the definition approved by the California Supreme Court was unconstitutional—or more accurately, since petitioner prevented a final determination of whether he was of good moral character, whether the areas of inquiry in which respondents sought or received evidence were relevant to any constitutional definition of good moral character.

Professions Code Section 6068 defines the duties of an attorney in California and suggests many of the elements of good moral character:

"§6068 *Duties as an attorney.* It is the duty of an attorney:

"(a) To support the Constitution and law of the United States and of this State.

"(b) To maintain the respect due to the courts of justice and judicial officers.

"(c) To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

"(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

"(e) To maintain inviolate the confidence, and at every peril of himself to preserve the secrets, of his client.

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

"(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

"(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed."

Cal. Bus. and Prof. Code, Sec. 6068.

Respondents submit that there can be no question that good moral character as thus defined can be required of applicants for admission to the California Bar.[9]

We do not understand even petitioner to contend that a state may not demand the allegiance and loyalty of an applicant for admission to the Bar, at least to the extent of establishing that he does not advocate the violent overthrow of the government of his state and nation. However, whether or not petitioner agrees, we deem it indisputable that a state may properly require such loyalty. General oaths of allegiance are required in every state and numerous states have imposed additional requirements of loyalty, including that the applicant does not advocate the violent overthrow of the government, by statutory construction of the general requirements of character and fitness.

In re Anastaplo, 3 Ill. 2d 471, 121 N. E. 2d 826, cert. den. 348 U. S. 946, reh. den. 349 U. S. 908;

Application of Cassidy, 51 N. Y. S. 2d 202, aff'd 296 N. Y. 926, 73 N. E. 2d 41;

Martin v. The Law Society, 3 Dominion Law Reports 173;

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[9]Since petitioner by his refusal to answer questions or produce other evidence with respect to broad areas of Committee inquiry, forced a determination that he had failed to bear the burden of establishing his good moral character rather than allowing a determination of whether he was of good moral character, the real question before us is not whether a particular definition of good moral character which Respondents might have had in mind was constitutional, but whether the areas of inquiry were so irrelevant to any constitutional definition of good moral character that the Committee could not properly consider or request evidence in these areas. As will be discussed below, the areas of inqury were both relevant and proper.

2 U. C. L. A. L. Rev. 224;

In re Patterson (Ore. Sup. Ct., Oct. 10, 1956), 25 U. S. Law Week 2201.

This Court approved the far more extreme requirement of requiring an applicant to be willing to support the constitution by force of arms despite religious convictions to the contrary in *Re Summers,* 325 U. S. 561. There would seem to be no question that the lesser requirement of not advocating its violent overthrow should also be upheld.

F. The Evidence Considered by Respondents Was Relevant to Its Inquiry Whether Petitioner Was a Person of Good Moral Character and Could Truthfully State That He Did Not Advocate the Overthrow of the Government by Force or Violence. There Is No Constitutional Bar to the Consideration of Such Evidence.

Petitioner was denied admission to the California Bar because:

1. Evidence before the Committee raised doubts whether he was a person of good moral character and could truthfully state that he did not advocate the violent overthrow of the government, and

2. Petitioner's actions before the Committee increased rather than dispelled these doubts so that he failed to affirmatively establish his qualifications as required by California law.

The record shows that two general types of information were the original source of the Committee's doubts:

(a) Direct testimony that petitioner was an active member of the Communist Party and indirect

corroboration of such membership and his acceptance of and participation in its activities, ideals and objectives.

(b) Evidence indicating that petitioner's standards with regard to matters such as truth, honesty and general morality were such that he could not be considered a person of good moral character and that his unsupported declaration that he did not advocate the violent overthrow of the government could not be accepted as conclusively establishing that he did not advocate the violent overthrow of the government.

Respondents respectfully submit that such evidence was relevant to the Committee's inquiry and that consideration of such relevant evidence in no way violated petitioner's constitutional rights. They also submit that their further inquiry into these areas of doubt was proper and in no way infringed petitioner's constitutional rights.

1. Information Indicating That Petitioner Was a Member of, and in Sympathetic and Active Association With, the Communist Party Was Relevant to a Determination of Good Moral Character. This Relevancy Arose From the Nature of the Activities, Objectives, and Standards of Conduct Adopted by the Communist Party.

The events of the past fifteen years have established that the Communist Party is not a "political party" but a criminal conspiracy dedicated to the establishment of Communism in the United States by any means at their disposal. Legislative findings confirming this have been made by the United States Congress and the Legislature of the State of California.

The Communist Control Act before proceeding to deny to the Communist Party the rights, privileges and immunities given to legal bodies such as legitimate political parties states:

> "The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. * * *"
>
> 68 Stat. 775, 50 U. S. C. Sec. 841 (Supp. 1954).

Similarly in adopting the Internal Security Act of 1950, it found:

> "As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress finds that—
>
> "(1) There exists a world-wide Communist movement which in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.
>
> "(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality. . . .

"(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement. . . .

"(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States."

64 Stats. 987, 50 U. S. C. Sec. 781.

Similar findings have been made in California:

"(a) There exists a world-wide revolutionary movement to establish a totalitarian dictatorship based upon force and violence rather than upon law.

* * * * * * * *

"(d) Within the boundaries of the State of California there are active disciplined communist organizations presently functioning for the primary purpose of advancing the objectives of the world communism movement, which organizations promulgate, advocate, and adhere to the precepts and the principles and doctrines of the world communism movement. * * *

"(e) One of the objectives of the world communism movement is to place its members in state and local government positions and in state supported educational institutions. * * *

"There is a clear and present danger, which the Legislature of the State of California finds is great and imminent, that in order to advance the program, policies and objectives of the world communism movement, communist organization in the State of California and their members will engage in concerted effort to hamper, restrict, interfere with, impede, or nullify the efforts of the State and the public agencies of the State to comply with and enforce the laws of the State of California and their members will infiltrate and seek employment of the State and its public agencies. (Added Stats. 1953, c. 1646, p. 3366, Sec. 1.)"

Cal. Gov. Code, Sec. 1027.5.

Judicial findings and comments have confirmed these legislative findings. The following are illustrative:

"The jury found that the Party rejects the basic premise of our political system—that change is to be

brought about by nonviolent constitutional process. The jury found that the Party advocates the theory that there is a duty and necessity to overthrow the Government by force and violence. It found that the Party entertains and promotes this view, not as a prophetic insight or as a bit of unworldly speculation, but as a program for winning adherents and as a policy to be translated into action."

Dennis v. United States, 341 U. S. 494, from concurring opinion of Mr. Justice Frankfurter at pages 546-7.

"The Communists have no scruples against sabotage, terrorism, assassination, or mob disorder; but violence is not with them, as with the anarchists, an end in itself. The Communist Party advocates force only when prudent and profitable. Their strategy of stealth precludes premature or uncoordinated outbursts of violence, except, of course, when the blame will be placed on shoulders other than their own. They resort to violence as to truth, not as a principle but as an expedient."

Dennis v. United States, 341 U. S. 494, from concurring opinion of Mr. Justice Jackson at page 564.

"1. *The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate.* * * *

"2. *The Communist Party alone among American parties past or present is dominated and controlled by a foreign government.* * * *

"3. *Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal.* * * *

"4. *The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement.* * * *

"5. *Every member of the Communist Party is an agent to execute the Communist program.* * * *"

American Communications Assoc. v. Douds, 339 U. S. 382, from concurring and dissenting opinion of Mr. Justice Jackson at pages 425-431.

When a group acquires a general reputation for objectives, standards and activities such as those set forth above, when this reputation is affirmed by legislative and judicial findings, and when scores of the leaders of this group are convicted and sent to prison for violation of our laws, Respondents submit that the nature and extent of a prospective attorney's association with that group is relevant to a determination of his good moral character. Such evidence may therefore be sought and considered by Respondents unless there is a specific statutory privilege protecting a particular source of such evidence. That there is no such constitutional privilege will be established in subsection 5 *infra*.

Respondents have never, and do not now, take the position that past membership in the Communist Party necessarily disqualifies an applicant from admission to the California Bar. Respondents do not foreclose the possibility that such membership could be shown to be innocent and without knowledge of or participation in, the illegal and immoral aims, ideals and activities of the Party, nor do they foreclose the possibility that an individual has broken with the Party and has re-established his good moral character. But Respondents again affirm that evidence of both past and present membership is relevant to their inquiry and properly raises doubts

whether an applicant is of good moral character. Failure of Petitioner to explain or deny evidence of such membership properly heightens these doubts.

2. Information Indicating That Petitioner Was a Member of and in Sympathetic and Active Association With the Communist Party Was Relevant to a Determination of Whether Petitioner Advocated the Overthrow of the Government by Force and Violence or Other Unconstitutional Means.

The discussion and authorities set forth above are equally applicable here. The Communist Party has acquired the general reputation of advocating the violent overthrow of the government. This reputation is supported by legislative findings and findings of courts and juries in convicting numerous Communist leaders for advocating or conspiring to teach and advocate the violent overthrow of the government. Respondents submit that the nature and extent of the prospective attorney's association with such a group is relevant to a determination of whether he satisfies the statutory requirement that he does not advocate the violent overthrow of the government.

Respondents stress that it is not their position that evidence of membership in the Communist Party proves that a person personally advocates the violent overthrow of the government and hence automatically bars him from admission to the California Bar. For example, an applicant might establish that despite such membership he has never personally advocated the violent overthrow of the government or that, though once advocating it, he no longer does so. But, evidence of membership in the Communist Party is relevant to a determination of whether an applicant advocates the violent overthrow of the government. If such evidence is neither denied nor satis-

factorily explained, it properly raises doubts whether the applicant could truthfully state that he does not advocate the violent overthrow of the government.

3. Evidence Indicating That Petitioner's Standards of Truth, Honesty and General Morality Were Deficient Was Relevant to a Determination Whether He Was a Person of Good Moral Character.

In addition to the evidence of association with the Communist Party, Respondents considered a number of public statements by petitioner (*e. g.*, in his California Eagle articles and in his statements to the California Senate Committee on UnAmerican Activities) directly suggesting that petitioner was not a person of good moral character. Illustrative statements are set forth in the Statement of Material Facts.

It is not unusual for public figures to be attacked, and even the Courts must bear their share of abuse. Respondents do not deny petitioner the right to make such statements, nor do they deny him admission to the Bar solely because he made them.

However, respondents could not ignore the fact that petitioner repeatedly made violent attacks on the character and integrity of the Courts and other responsible persons in statements which appeared to be patently incorrect and which suggested that they were made without evidence to support them and with indifference to their truth or falsity.

The duties of an attorney in California include:

"It is the duty of an attorney:

* * * * * * * *

"(b) To maintain the respect due to the courts of justice and judicial officers.

* * * * * * * *

"(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

* * * * * * * *

"(f) to abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged."

Cal. Bus. & Prof. Code, Sec. 6068.

If made as an attorney, such statements would be grounds for disbarment. The fact that they were not made as an attorney, but as a newspaper man, was taken into account and petitioner was given every opportunity to show either that he had evidence to support his charges or that he would adopt different standards today as an attorney. He refused to do so.

Respondents submit that making such statements are an expression of petitioner's moral standards and are relevant to determination of his good moral character. Whether they were made with evidence to support them and reflect respondents' standards today are similarly relevant.

4. There Is No Constitutional Bar to Consideration of Newspaper Articles Written by Petitioner Where Relevant to Respondents' Inquiries. Similarly, There Is No Bar to the Consideration of Statements Made by Petitioner to the California Senate Committee on Un-American Activities.

As previously indicated, the California Eagle articles were introduced into evidence without any objection by petitioner. In fact, petitioner himself introduced a complete set of his California Eagle articles. He relied on such articles as evidence on his behalf whenever it was to his advantage to do so. Thus, if any constitutional privilege preventing consideration of these articles existed, it was effectively waived. But, in any event, there is no such constitutional privilege.

Respondents do not question petitioner's constitutional right to publish articles of the type considered. It may be assumed that California has no power either to prevent their publication or to subsequently punish petitioner for making such statements. (*Pennekamp v. Florida* (1945), 328 U. S. 331.) But this is not the issue before us.

Newspaper articles are no different than any other form of human expression in that the writer must expect to be judged by the contents of his articles. One's writings may give him the reputation of being honest, fearless and fair or of being irresponsible, dishonest and unfair. This is the use which respondents made of petitioner's articles.

Whether respondents agree or disagree with the contents of the articles is immaterial. The crucial question is whether they reflect standards of responsibility, honesty and fair play indicating that petitioner was or was not a person of good moral character. The fact that a person

is privileged to perform an act does not mean that the manner in which he performs that act may not be considered as an expression of his moral standards and hence as evidence of his good moral character.[10]

N.L.R.B. v. Pick Mfg. Co., 135 F. 2d 329;
N.L.R.B. v. M. E. Blatt Co 143 F. 2d 268;
United States v. Orth, 51 Fed. Supp. 682, reversed on other grounds. 142 F. 2d 969.

The discussion above is equally applicable to petitioner's statements to the California Senate Committee on UnAmerican Activities. We fully recognize petitioner's right to hold any belief he wishes and to make even irresponsible and unfair statements without prior restraint. But, to the extent that such statements are made without basis and with disregard for the rights of others, they indicate a defect in petitioner's moral standards and may properly be considered as evidence of his good moral character.

Petitioner was given every opportunity to show that he had evidence to support such statements or even that he honestly believed they were true when he made them. He failed to do so. He also failed to indicate whether the making of irresponsible statements without any basis therefor reflected his standards today. Respondents submit that they can properly draw the inference from his failure to answer such questions that the answers would have been adverse and may consider this as additional evidence supporting their determination.

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[10]As noted above, petitioner was given every opportunity to show that his standards as an attorney would be higher than those he apparently adopted as a newspaperman immediately preceding and during his law school career. He made no attempt to do so.

5. There Is No Constitutional Bar to the Consideration of Evidence Concerning Petitioner's Association With the Communist Party.

Mrs. Bennett's testimony was introduced into evidence before the Southern Subcommittee of Bar Examiners and the full Committee without any objection by petitioner [R. 42-57, 97]. The California Eagle articles and the transcript and statement from the California Senate Committee on UnAmerican Activities were similarly introduced without objection [R. 8, 58, *et seq.*, 97]. Any constitutional privilege which petitioner might have had to the consideration of such evidence was thereby waived. However, even had there been no waiver, there is no constitutional bar to considering such evidence. Nor is there a constitutional privilege, such as is urged by petitioner, which prevents respondents from asking him whether he now is, or formerly was, a member of the Communist Party.

Numerous decisions of this Court have affirmed the right to inquire into past or present associations with the Communist Party in other contexts.

Garner v. Board of Pub. Wks. of Los Angeles, 341 U. S. 716;

Adler v. Board of Education, 342 U. S. 485;

Orloff v. Willoughby, 345 U. S. 83;

American Communications Assoc. v. Douds, 339 U. S. 382;

Gerende v. Board of Supervisors, 341 U. S. 56;

Black v. Cutter Laboratories, 100 L. Ed. Adv. 681;

Steinmetz v. Cal. State Board of Education, 44 Cal. 2d 816; cert. den. 100 L. Ed. Adv. 538.

Respondents submit that the interest of the state in selecting personnel for its Bar is no less vital and im-

portant than the situations there presented and equally justifies the right of the state to make such inquiries. Every state court considering this problem has arrived at the same conclusion.

In re Anastaplo, 121 N. E. 2d 826; cert. den. 348 U. S. 946; reh. den. 349 U. S. 908;

Schware v. Board of Bar Examiners, 60 N. M. 304, 291 P. 2d 607;

In re Patterson (Ore., 1956), 25 U. S. Law Week 2201;

The Canadian courts reached the same result in *Martin v. Law Society*, 3 Dom. L. R. 173.

It may be added, though perhaps unnecessarily, that even were it assumed, contrary to the fact, that petitioner had a constitutional privilege not to answer, an adverse inference may nevertheless be drawn from the exercise of this privilege.[11]

Adamson v. California (1946), 332 U. S. 46.[12]

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[11]As will be discussed in Part IV, even were no such inference drawn, there is sufficient affirmative evidence of petitioner's association with the Communist Party to properly raise reasonable doubts whether petitioner was a person of good moral character and could truthfully state that he did not advocate the violent overthrow of the government. Apart from any adverse inferences from petitioner's failure to answer, he can certainly not contend that his failure to answer provided the affirmative evidence necessary to dispel these doubts and establish his qualifications as required by California law.

[12]We do not argue that such a refusal to answer is tantamount to a confession of guilt or a presumption of perjury. But it is proper to consider and attach significance to the fact that a man remains silent when confronted with serious and responsible evidence against himself which it is within his power to contradict, confirm, or explain. See Concurring Opinion, Mr. Justice Frankfurter in *Adamson v. California* at pp. 59-61.

G. There Are No Other Grounds Upon Which Respondent's Action May Be Reversed.

Two final arguments raised by petitioner require brief mention:

1. He was required to bear an unreasonable burden of proof (Pet. Br. 7, 55).

2. He was denied due process by respondent's retroactively establishing a political test for admission to the Bar (Pet. Br. 55-57).

1. Burden of Proof.

The issue of burden of proof is of extreme importance to the State Bar of California and, we are sure, to other State Bars throughout the country. The statutes in the various states have uniformly been construed to require the applicant to bear the burden of establishing his qualifications for admission. This is true in California where, although burden of proof is nowhere specified in the statutes, the cases from earliest times have required the applicant to bear the burden of proof and have stressed the necessity of the candidate desiring admission to be open and candid with the Committee of Bar Examiners and assist them by disclosing all relevant information.

Spears v. The State Bar (1930), 211 Cal. 183;
In re Wells (1917), 174 Cal. 467;
In re Steppay (1940), 15 Cal. 2d 71;
In re Garland (1934), 219 Cal. 661;
State Bar v. Tangert (1954), 43 Cal. 2d 637, 642.

Most of the early California cases dealt with good moral character and their holdings have since been sum-

marized in Rule 10 of the Rules of the Committee of Bar Examiners which provides:

> "The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicions of moral unfitness, and that he is entitled to the high regard and confidence of the public."

Even where no serious doubt arises with respect to an applicant's qualifications, it is standard practice to inquire into many personal matters which a person is normally privileged to keep to himself. Thus, the standard application form required of all applicants asks the applicant for details of his past employment, education, whether he was ever suspended, reprimanded or censured as a member of any profession or organization, whether he has ever been arrested, whether he has ever been a party to a lawsuit and for the details of any incidents of a derogatory nature bearing on his fitness to practice law. If the answers to such questions embarrass an applicant, he is privileged to refuse to answer just as he is privileged to refuse to answer any question on the Bar examination. However, in either case he runs the risk that failure to answer such questions will prevent his admission to the Bar.

Respondents submit that it is in no sense unreasonable or improper to require an applicant to cooperate in supplying all requested information that is relevant to his statutory qualifications. California requires that the applicant bear the burden of establishing his good moral

character by removing all reasonable suspicions of his moral unfitness. Although a specific rule has not been adopted with regard to advocacy of violent overthrow of the government, it can be assumed that a similar test applies. Respondents submit that both the tests themselves and the manner in which they were applied here clearly do not violate the requirements of due process:

(a) *Good Moral Character:*—Reasonable doubts that petitioner was a person of good moral character arose from many sources:

(1) Direct testimony that he was a member of the Communist Party.

(2) Transcript of hearings before the California Senate Committee on UnAmerican Activities indicated that petitioner was a member of the Communist Party.

(3) Statements in petitioner's California Eagle articles and before the Senate Committee indicating that he may have been a member of the Communist Party.

(4) Statements in petitioner's California Eagle articles and before the Senate Committee which directly indicated that petitioner's moral standards were deficient.

(5) Petitioner's refusal to answer questions in such broad areas of inquiry as to effectively prevent inquiry into broad areas of doubt.

The evidence submitted by petitioner was not directed to these areas of doubt or to the removal of doubts and suspicions which were raised in the minds of the Com-

mittee members. It was therefore ineffective to reasonably dispel such doubts.[13]

Respondents have considered many close cases, but this was not one of them. The sources of serious doubts whether petitioner was of good moral character were so widespread that even were several of them removed from consideration petitioner would have still been denied admission. For example, as long as there is one reliable source of information indicating that petitioner was actively associated with the Communist Party remains and petitioner refuses to testify or otherwise produce evidence reasonably dispelling this area of doubt, he has failed to sustain the burden of proof required by the California law.

(b) *Advocacy of Violent Overthrow of the Government:*—Petitioner was refused admittance on two independent grounds either of which is sufficient to sustain the decision below. We feel that the determination with respect to good moral character was clearly correct, but the determination with respect to violent overthrow of the government would seem to be undisputable.

Petitioner stated that he did not advocate the violent overthrow of the government. He thereafter took the position that any further inquiry by the Committee with

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[13]Serious consideration was given to all of petitioner's evidence. His letters of recommendation were given particular weight. However, respondents have encountered numerous cases where splendid letters of reference were submitted even though the applicant was neither fit nor qualified. See, for example, *In re Stevens*, 59 Cal. App. 2d 251; *Wettlin v. State Bar*, 24 Cal. 2d 862; *Vaughan v. State Bar*, 208 Cal. 740; *Kepler v. The State Bar*, 216 Cal. 52; *Feinstein v. State Bar*, 39 Cal. 2d 541. Moreover, the doubts with respect to petitioner arose primarily in specific areas such as those relating to the Communist Party and the failure of any of the letters to indicate an awareness of these areas of doubt materially lessened their value.

respect to this requirement was foreclosed. This is equivalent to his appearing before the Committee and stating that he is a person of good moral character and the Committee must accept his statement and not inquire further. Even were there no adverse evidence in the record, respondents could properly refuse to certify an applicant as not having established his compliance with Business and Professions Code Section 6064.1, where, as here, he took the position that his bare answer that he complied with the requirement foreclosed further inquiry. However, we need not stop at this point. There was evidence from three different sources which petitioner neither denied nor explained, that he was an active member of the Communist Party, an organization which has repeatedly been found to advocate the violent overthrow of the government. (In addition, it may be noted that his California Eagle articles also provide some direct evidence that he was sympathetic to and probably advocated the violent overthrow of the government—*e. g.*, the article set forth at page 213 *et seq.* of the record where he declared that loyalty to America meant militant (which Webster defines as engaged in warfare, fighting, etc.) support of the principles of the Constitution as petitioner defined them. We feel that it is fair to surmise from petitioner's articles and activities that his definition of these principles are in close accord with those of the Communist Party).

Unless this Court were willing to hold that evidence of membership in the Communist Party has no possible relevancy to whether a person advocates the violent overthrow of the government, and we submit that such a position would be unthinkable, petitioner has unquestionably failed to bear the burden of proving he does not advocate the violent overthrow of the government.

As previously noted, even were one or more of the groups of evidence relied upon above removed from consideration, there is ample evidence to support the determination.

Barsky v. Board of Regents, 347 U. S. 442.

2. Contention That a Political Test For Admission Was Retroactively Established.

It is abundantly clear from prior sections of this brief that petitioner was not denied admission because of his political beliefs and activities. However, putting aside the question of what can properly be called a political belief or activity, petitioner apparently is attempting to argue that considering ev ence of Communist Party membership where no reported case considered such evidence denied him due process. Such an argument has at least two major fallacies preventing it from having any validity:

(a) Petitioner has never been admitted to the Bar and hence is in no position to argue retroactivity. We feel that there is no question but that California could have adopted new requirements for admission or altered old ones at any time during which petitioner was preparing for admission to the Bar without any possible question of retroactive legislation arising.

Chase Securities Corp. v. Donaldson (1944), 325 U. S. 304.

(b) The doctrine of unconstitutional retroactivity (which is itself limited) has never been applied to court decisions construing existing statutes. It is fundamental to our legal system that the law must be

allowed to develop and grow by court construction of existing statutes and the fact that a particular type of evidence or a particular type of moral defect was not previously considered in a reported decision in no way implies that such evidence or conduct is not relevant to good moral character and may not be considered in the future.[14]

VII.
Conclusion.

Two important rights are before this Court:

1. The right of each state to administer its own affairs and protect its interests and those of its citizens by prescribing the conditions for admittance to its Bar, and

2. The right of every citizen under the Fourteenth Amendment to be protected from state action denying him due process or equal protection of the laws including the protection of the First Amendment rights of free speech, press and assembly to the extent incorporated under the Fourteenth Amendment.

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[14]Even had there previously been a California decision specifically holding that Communist Party membership could not be considered as relevant to good moral character, there would have been no constitutional bar to such a decision being reversed or distinguished. However, not only was there no such decision, but on the contrary, past decision of the California courts would, if anything, indicate that such evidence could be considered. (See, for example, *Large v. The State Bar*, 218 Cal. 334.)

Respondents respectfully submit that the record fully establishes that:

1. California's statutes and practices governing admission to the Bar and their application in the present case are well within the area of permissible state action, and

2. The refusal to admit petitioner to the California Bar did not improperly infringe upon his rights under the Fourteenth Amendment. The decision of the California Supreme Court should therefore be affirmed.

Respectfully submitted,

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APPENDIX.

Constitutional Provisions and Statutes.

A. *Constitutional Provisions:*

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B. *California Statutes:*

Business and Professions Code Section 6010.

"§6010. *Board of governors.* The State Bar is governed by a board known as the board of governors of the State Bar. The board has the powers and duties conferred by this chapter."

Business and Professions Code Section 6046.

"§6046. *Examining committee: Powers.* The board may establish an examining committee having the power:

"(a) To examine all applicants for admission to practice law.

"(b) To administer the requirements for admission to practice.

~~"(c)~~ To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter."

Business and Professions Code Section 6047.

"§6047. *Same: Rules and regulations.* Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4."

Business and Professions Code Section 6060.

"§6060. *Qualifications for applicants.* To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

"(a) Be a citizen of the United States.

"(b) Be of the age of at least 21 years.

"(c) Be of good moral character.

"(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination."

Business and Professions Code Section 6064.

"§6064. *Admission on examiners' certificate: Admission certificate.* Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit such applicant as an attorney at law in all the courts of this State and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court."

Business and Professions Code Section 6064.1.

"§6064.1. *One advocating the overthrow of government not to be admitted.* No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconsitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

Business and Professions Code Section 6066.

"§6066. *Court review of refusal to certify examined applicant.* Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court."

Business and Professions Code Section 6068.

"§6068. *Duties as an attorney.* It is the duty of any attorney:

"(a) To support the Constitution and law of the United States and of this State.

"(b) To maintain the respect due to the courts of justice and judicial officers.

"(c) To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

"(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

"(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client.

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

"(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

"(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed."

C. *Rules and Regulations:*

Rule I, Section 2 of the Rules Regulating Admission to Practice Law in California

"The committee shall have power to examine all applicants for admission to practice law and to administer the requirements for admission to practice. The committee shall certify to the Supreme Court for admission to practice law those persons, and only those persons who fulfill the requirements for admission to practice law provided in The State Bar Act and by these rules."

Rule X, Section 101 of the Rules Regulating Admission to Practice Law in California

"Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsay rule, nor any other technical rule of evidence, need be observed; but an applicant shall be advised of any and all information received by the

committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based; and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the burden of proving that he is possessed of good moral character, or removing any and all reasonable suspicion of moral fitness, and that he is entitled to the high regard and confidence of the public."

Rule 59(b) of Rules on Appeal of the California Supreme Court

"A petition to the Supreme Court to review any other action of the Board of Governors of The State Bar, or of any committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act shall be filed within 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of The State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service on the Board of Governors of 3 copies of the petition and the brief. Within 10 days after service of the petition, the Board of Governors may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered the Board of Governors, at least 20 days before the return day, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which 3 copies shall have been served on the Board of Governors."

California Admission Procedure.

Under the California procedures, prospective attorneys must:

1. Register during the first year of law school and pass a first-year students' examination at the end of the first year unless qualifying under one of the statutory exemptions—*e.g.*, students who successfully complete the first-year course at an accredited law school are not required to take the first-year examination.

2. When a student completes the educational requirements and feels that he is qualified for admission to practice law, he may file for permission to take the Bar exam and for subsequent admission to the Bar. The Bar examination is given twice a year, with most students taking the Fall examination. Applications for the Fall examination must be filed during the April 1 to June 30 period preceding the exam.

Upwards of 1,600 first-year registrations are received each year. Approximately 60% of such registrants eventually apply for admission to the Bar and about 80% of those applying for admission eventually are admitted.

The statutory standards for admission must be met at the time of admission. The fact that the applicant did or did not meet certain of the qualifications when he registered as a first-year student is immaterial. For this reason, together with the large number of first-year registrants who never apply for admission and the limited staff which is available to process the applications, it is the fixed policy of the Committee not to make any determination of an applicant's qualifications at the time of his first-year registration. This has been modified in the last two years by a policy allowing a first-year regis-

trant to affirmatively request an advisory opinion on his qualifications where he feels doubt exists. With this limited exception, the determination with respect to all qualifications, such as good moral character, is made during the approximately four months between the filing of the application and the date of the Bar Exam. Most applicants are so clearly qualified that only a routine check with past employers, references, etc., is necessary. In a few cases doubts arise, but are readily dispelled by the applicant in ample time to allow him to take the Bar examination. Where the applicant fails to establish his qualifications prior to the Bar examination, it has been the Committee's practice, if requested to do so, to allow him to take the Bar examination under the express understanding that his other qualifications must subsequently be determined and that doubts as to these qualifications are not waived by allowing him to take the Bar examination.

It may also be noted that under the California admissions procedure, petitioner may reappear before the Committee at any time now and submit evidence that he meets the statutory tests of good moral character and not advocating the violent overthrow of the government.

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SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

October Term, 1956

No. 5

RAPHAEL KONIGSBERG,

Appellant,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* AND BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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INDEX

	PAGE
Motion for Leave to File *Amici Curiae* Brief	1
Amicus Curiae Brief	5
Argument	7
POINT I—Admission to the Bar cannot be arbitrarily denied nor can it be conditioned upon the relinquishment of Constitutional rights	7
A. The test of "good moral character" as here applied violates the Fourteenth Amendment by denying due process and abridging freedom of speech and association	7
B. A finding, upon the evidence herein, that petitioner advocates forcible overthrow of the government can only be reached in derogation of the requirements of due process of law	10
C. On any theory, denial of an application to practice law because of political beliefs and affiliations is an unconstitutional abridgment of "First Amendment Rights"	11
POINT II—The State action here is a challenge to the independence of the bar	13
Conclusion	16

Table of Cases Cited

Adamson v. California, 332 U. S. 46, 55 (1947)	11
In re Adoption of a Minor (D. C. Cir. 1955) 228 F. 2d 446, 448	9
Burstyn (Joseph) Inc. v. Wilson, 343 U. S. 495	8, 12
Cammer v. United States, 350 U. S. 339, 403-4	14
Cantwell v. Connecticut, 310 U. S. 296	12

PAGE

De Jonge v. Oregon, 299 U. S. 358 9

Garland, Ex Parte, 4 Wall. 333, 378 ..... 9, 12, 13

Kunz v. People, 340 U. S. 290 12

Near v. Minnesota, 283 U. S. 697 12

Offutt v. United States, 348 U. S. 11 ..... 12, 14

Ohio Bell Telephone Co. v. Comm'n, 301 U. S. 292, 302 7-8

Parker v. Lester (9th Cir. 1955) 227 F. 2d 708 10

Powell v. Alabama, 287 U. S. 45 13

Public Utilities Comm. v. Pollok, 343 U. S. 451 12

Secombe, Ex Parte, 19 Howard, 9, 13 2

Slochower v. Board of Education, 350 U. S. 551 (1956) 11

Stromberg v. California, 283 U. S. 359 12

Summers, In re, 325 U. S. 561, 570 12

Watts, In re, 190 U. S. 1, 29 14

Statutes Cited

Calif. B. & P. C.:

Section 6060c 5

Section 6064.1 5

Authorities Cited

American Bar Assn. Canon of Ethics No. 15 13

Brown and Fassett, "Loyalty Tests for Admission to the Bar" (20 U. Chi. L. R. 480, 1953) 8

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PAGE

Douglas, Justice Wm. O., A Crusader for the Bar: Due Process in a Time of World Conflict, 39 A. B. A. J. 871,-874 (1953) 14

Gossett, Wm. T., General Counsel to Ford Motor Co., Address to Michigan Judges Assn.. Release of Ford News Bureau 15

Jessup, The Professional Ideals of the Lawyer, A Study of Legal Ethics (N. Y. 1925) p. 24 15

Lord Brougham on Thomas Erskine, 1 Cooley's Const. Lim. 8th ed., p. 704 footnotes 15

Stansbury, Report of the Trial of James H. Peck, Judge of the United States District Court (1833) pp. 448-450 14

Rules for admission to the Bar, 35 West Pub. Co., 1951 6

Willcox, "Invasions of the First Amendment through Conditioned Public Spending," 41 Cornell L. Q. 12 (1955) 9

IN THE

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No. 5

RAPHAEL KONIGSBERG,

Appellant.

VS.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

I.

Nature of Interest of *Amicus Curiae.*

This *amicus curiae*, The National Lawyers Guild, is a national bar association and, as such, it is of necessity concerned with the maintenance of an independent Bar and the promotion of justice in the administration of the law. As lawyers, we have a special interest in the criteria for admission to the Bar, and in the application of such criteria in individual cases. Arbitrary, capricious or otherwise unlawful action in this area by administrative or court officials presents a threat to the independence of the Bar and the administration of justice. We subscribe to the view expressed by Chief Justice Taney many years ago that the power to determine who is qualified to be admitted to practice law is not "an arbitrary and despotic one, to

be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by this court, as the rights and dignity of the court itself." *Ex Parte Secombe*, 19 Howard, 9, 13.

Petitioner here appears to have been excluded from his chosen profession for reasons unrelated to the nature and purpose of his calling. The calling of a lawyer requires independence of thought and action, vigorous, fearless and effective advocacy. Often it may demand the courage to support a client's cause against prevailing economic, social and political forces and, indeed, against the government itself. A lawyer will be called upon to argue even to this Court that its ruling of yesterday was in error, that its well-considered judgments should be reversed.

A lawyer is, almost by definition, a challenger to the *status quo*. For if the lawyers had not come forward to challenge long established ways of life and long-recognized precedents of government would we not still be living in a society dominated by laissez-faire economics and "separate but equal" education?

Any criterion for admission to the Bar which concerns itself with an applicant's beliefs or opinions concerning the state, or his expressed opposition to the state, or particular aspects of the existing structure of the state, or indeed, of the society in which we live, and which have the effect of excluding applicants who have in fact opposed, or are suspected of opposing those "who sit in the seats of the mighty", will hardly serve to improve the quality of the Bar. Rather, it will weaken the Bar by excluding those who may indeed be most capable of vigorous and fearless advocacy against powerful opposition. If an applicant's political views or associations are to be com-

pulsorily disclosed as a condition to admission to practice, we may find a Bar left without members able to offer wholehearted acceptance of the oath that many a lawyer takes upon admission: that he will "never reject for considerations personal to [him]self the cause of the helpless or the oppressed".

We do not believe that applicants for admission to the practice of the law lose their constitutional rights as citizens, nor that they can be compelled to forswear those rights as a condition for admission to the Bar. We do not believe that such persons can be treated as if they were mere applicants for a "job" or striving to enlist in the military or certain services of the United States. Petitioner here appears to have been excluded from his chosen profession for reasons unrelated to the nature and purpose of the calling which he sought to exercise. In imposing nebulous qualifications, then accusing petitioner of failing to meet them, constitutional limitations have been disregarded.

An examination of the briefs and petitions heretofore filed in this case does not indicate that these questions of public importance have been adequately covered by the parties. The National Lawyers Guild therefore asks leave to file the brief herein *amicus curiae*. We are gravely concerned with the issues involved because the radial effect of a decision on this case will extend beyond the borders of California, affecting the right of persons not only to pursue their chosen professions in the states but in the federal jurisdiction as well. Attorney for the petitioner has consented to the filing of this brief but the attorney for the respondent has refused his consent.

Respectfully submitted,

OSMOND K. FRAENKEL,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

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No. 5

—o—

RAPHAEL KONIGSBERG,

Appellant,

VS.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

—o—

BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANT

California requires that applicants for admission to the Bar shall be persons of "good moral character" (Calif. B. & P. C., Sec. 6060c) and shall not presently advocate the overthrow of the government, federal or state, "by force, violence, or other unconstitutional means" (Calif. B. & P. C., Sec. 6064.1).

The petitioner appears to have disavowed all advocacy of the forcible overthrow of the government. Furthermore, he appears on the record to have furnished overwhelming evidence of good character, but, nevertheless, has been held not to have sustained the burden of proving that he is a person of "good moral character."

The justification for the denial of petitioner's application is not specified by the committee, and this notwithstanding that the committee's own rules apparently provide

that an applicant shall be informed of the information on which an adverse decision is based. (Rules for admission to the Bar, 35 West Pub. Co., 1951.) Unless the committee had derogatory information in its possession gathered from confidential questionnaires sent out to his references, employers, or others, or furnished by the Federal Bureau of Investigation in accordance with the admission procedures above described, and based its denial on such information without disclosing such fact, the justification appears to rest upon one or all of the following grounds: (1) That he once expressed certain views in the columns of a newspaper and declined to explain or indicate whether he still maintained the same opinions; (2) That he made certain statements and gave certain testimony before a State Senate Committee; (3) That he allegedly attended some meetings of the Communist Party in 1941 and declined to answer questions with respect to his membership in that party, although in answer to a question as to whether he was a Communist he had said "I will say no, definitely no." Specifically stating that he did not invoke the Fifth Amendment, his refusal to answer further concerning his political, social and economic views and affiliations appears to have been based on the First Amendment and a conviction that one's beliefs are protected from government scrutiny and proscription.

ARGUMENT

POINT I

Admission to the Bar cannot be arbitrarily denied nor can it be conditioned upon the relinquishment of Constitutional rights.

As the Committee did not specify the grounds upon which it denied petitioner's application, we must consider the two *possible* grounds of its denial to discover whether either can meet the due process requirements of the Fourteenth Amendment. We shall assume, first, that the denial was based on the ground of lack of "good moral character" and, second, the committee concluded that petitioner presently advocates the overthrow of the government by unconstitutional means; finally, we shall seek to discover whether there is any rational—and constitutionally permissible—basis for the denial of petitioner's application.

A. The test of "good moral character" as here applied violates the Fourteenth Amendment by denying due process and abridging freedom of speech and association.

We shall not enter here into the age-old controversy: whether a license to practice law is a "privilege" or a "right." For these words lend themselves more readily to conclusions than to intelligent argument, and a reading of the cases can only show that what the courts have seen fit to protect under the due process clause has been labeled a "right" while that which is denied protection is brushed off as a "mere privilege." But we need not argue this, for even "privileges" cannot be withdrawn or withheld in purely arbitrary fashion nor conditioned upon the prior relinquishment of Constitutional rights.

"Protection of the individual from arbitrary action" is the very essence of due process, *Ohio Bell Telephone Co.*

SUBJECT INDEX

	PAGE
Motion for Leave to File Brief Amicus Curiae	1
Brief of Amicus Curiae	5
Argument	5
The statutes at bar have been unconstitutionally applied by respondents as a prior restraint on speech, press and assembly	5
Conclusion	17

TABLE OF AUTHORITIES CITED

CASES	PAGE
Alston v. School Board, 112 F. 2d 992	9
Barsky v. Board of Regents, 347 U. S. 442	7
Bridges v. California, 314 U. S. 252	13
Bridges v. Wixon, 326 U. S. 135	17
Chaplinsky v. New Hampshire, 315 U. S. 568	12
Cole v. Young, 351 U. S. 536	9
Craig v. Harney, 331 U. S. 367	13
Cummings v. Missouri, 4 Wall. 277	9
DeJonge v. Oregon, 299 U. S. 353	8
Dennis v. United States, 341 U. S. 494	14
Dent v. West Virginia, 129 U. S. 114	7
Dickinson v. United States, 346 U. S. 389	17
Fierstein, Ex parte; 41 F. 2d 53	14
Fiske v. Kansas, 274 U. S. 380	8
Garland, Ex parte, 4 Wall. 333	9
Hannegan v. Esquire, Inc., 327 U. S. 146	8, 10, 12, 15
Housing Authority v. Cordova, 130 Cal. App. 2d 883, 279 P. 2d 215; cert. den., 350 U. S. 969	8, 15
Jay v. Boyd, 351 U. S. 345	14
Kunz v. New York, 340 U. S. 290	12
Lanzetta v. New Jersey, 306 U. S. 451	14
Lawson v. Housing Authority, 270 Wis. 269, 70 N. W. (20) 605; cert. den., 350 U. S. 882	8, 15
Lovell v. Griffen, 303 U. S. 444	8
Near v. Minnesota, 283 U. S. 697	8
Pennekamp v. Florida, 328 U. S. 331	13
Saia v. New York, 334 U. S. 558	8, 10, 12
Schneiderman v. United States, 320 U. S. 118	9, 14, 17
Sheiner v. Florida State Bar, 82 So. 2d 657	16
Sicurella v. United States, 348 U. S. 385	9

PAGE

Slochower v. Board of Education, 350 U. S. 551 9
Takahashi v. Fish and Game Commission, 334 U. S. 410 9
Terminiello v. Chicago, 337 U. S. 1 12
Thomas v. Collins, 323 U. S. 516 8
Truax v. Raich, 239 U. S. 33 9
United States v. Hautau, 43 F. Supp. 507 13
United States v. Lattimore, 215 F. 2d 847 13
United States v. Lightfoot, 228 F. 2d 861; cert. granted, 350 U. S. 992 9
West Virginia Board of Education v. Barnette, 319 U. S. 624 8
Wieman v. Updegraf, 344 U. S. 183 ..... 9, 14, 15
Winters v. New York, 333 U. S. 507 12
Yick Wo v. Hopkins, 118 U. S. 356 9

DICTIONARY

Webster's Collegiate Dictionary (5th Ed.), p. 648 12

STATUTES

California Business and Professions Code, Sec. 6060(c) 5
California Business and Professions Code, Sec. 6064.1 5
Sedition Law of 1798 13
United States Constitution, First Amendment 12

TEXTBOOKS

11 Howell's State Trials, p. 298 14
11 Howell's State Trials, p. 359 15
Patterson, Free Speech and a Free Press (1939 Ed.), pp. 136-137 13
West's California Codes, Rules Regulating Admission to Practice Law, Rule 1(2) 6

IN THE

Supreme Court of the United States

October Term, 1956

No. 244

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

The American Civil Liberties Union, Southern California Branch, by and through its counsel, respectfully requests permission to appear as *Amicus Curiae,* and to file the within brief in support of petitioner's position in the above entitled cause.

Counsel for the American Civil Liberties Union have read the record at bar, and have familiarized themselves with the arguments presented by the parties hereto, and believe there is need for further argument upon one of the points advanced by petitioner.

This applicant is dedicated to the support and protection of the civil liberties and rights of all persons, irrespective of status, politics, origin or the nature of the crime charged. The Union believes that freedom of thought, expression and association are the most precious possessions the American citizen has; and that these freedoms guarantee a dynamic and thoughtful body politic and a democratic government. But to serve this function, speech and beliefs must be left free of governmental restraint, save that minimal amount reasonably essential to preserve ordered liberty.

It would appear in the case at bar that petitioner has been denied a license to practice law in California on account of what he believes, not for what he does. The independence of the Bar is thereby put in peril; but more importantly, the right to speak and think has been made the hostage of the need to work. California's laudable desire to protect itself against subversion must be balanced against those principles which, in fact, it is supposed to be safeguarding: liberty, and the free choice of a livelihood. The American Civil Liberties Union believes the scale is not in balance here because the State has a finger on it.

Because respondents here have construed a State statute in a manner which gives government the power to permit a citizen to work only if it agrees with his ideas, and approves of his associates; and because such assertion of power by the State constitutes a clear and present danger

to the civil liberties of every man; and because the action of the State in the case at bar is of special concern to the American Civil Liberties Union, it is respectfully requested that applicant be granted permission to file the within brief in support of petitioner's position. Consent to the appearance of the Union as *Amicus* has been withheld by respondents solely because they prefer to leave that question for this Honorable Court to decide.

Respectfully submitted,

A. L. WIRIN,

HUGH R. MANES,

Counsel, American Civil Liberties Union, Southern California Branch.

IN THE

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No. 244

RAPHAEL KONIGSBERG,

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THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA.

BRIEF OF AMICUS CURIAE.

ARGUMENT.

The Statutes at Bar Have Been Unconstitutionally Applied by Respondents as a Prior Restraint on Speech, Press and Assembly.

Under the law of California, admission to practice law in that State is conditioned upon the good moral character of the admittee;[1] and may be denied to one who advocates the overthrow of government "by force, violence, or other unconstitutional means."[2]

---

[1]California Business and Professions Code, §6060(c), as amended (1951).

[2]California Business and Professions Code, §6064.1, as amended (1951).

Respondents are authorized by California law to pass upon the foregoing, and other qualifications, of each applicant for the Bar, and to certify those whom it deems qualified to the Supreme Court of California.[3] The record at Bar reveals that between September, 1953, and March, 1954, respondents conducted four separate hearings [R. 4, 46, 86, 96],[4] purportedly to determine petitioner's fitness to practice law in California [See: *e.g.*, R. 34, 118, 131]. Documentary and oral evidence was introduced therein by respondents consisting of 1) some twenty-one editorials which petitioner wrote for a newspaper called The California Eagle, between July and December, 1950 [R. 73];[5] 2) a transcript of petitioner's testimony in 1948 before the State Senate Fact-Finding Committee on Un-American Activities (Tenney Committee) [R. 247-259]; and, 3) testimony of a former member of the Communist Party placing petitioner in the Party in 1942.[6]

Respondents propounded numerous questions to petitioner, virtually all of which related to his editorial opinions and associations. Petitioner declined to answer some of these inquiries, and upon the conclusion of the proceedings, he was notified that his application for admission

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[3]California Business and Professions Code, Div. 3; Ch. 4; Rule 1(2), of Rules Regulating Admission to Practice Law (West's California Codes).

[4]"R" refers to the "Transcript of Record" of the proceedings below; and thereafter follows the page number at which such reference may be found.

[5]Whereupon, petitioner added to the record the balance (twenty-nine) of the articles he had written for that paper [R. 73], and the sources for some of his articles [R. 272-286(h)].

[6]On the other hand, the record also contains thirty-six testimonials to petitioner's character [R. 287, *et seq.*]

to practice law had been denied. The grounds stated therefor were: That he had failed to establish that he 1) was of good moral character, and 2) was not an advocate of the forceful overthrow of government.[7] Subsequently, petitioner's application for Hearing to the Supreme Court of California was denied without opinion [R. 132]; and this Court granted certiorari (..... U. S. ....., 100 L. ed. (Advance p. 647), 5/21/1956).

Amicus believes that the petitioner's past beliefs and associates were no concern of the State's; that questions about them should not have been asked, and need not have been answered because they were not reasonably related to petitioner's fitness to practice law. The reasons in support of this view follow:

It is elementary that a State may establish and enforce within its borders standards of *conduct* which will safeguard the health, welfare and safety of everyone there (*Barsky v. Board of Regents,* 347 U. S. 442, 449).

Accordingly, the state may impose such reasonable regulation upon businesses and professions as will protect the public from corrupt and inept practices (*Dent v. West Virginia,* 129 U. S. 114, 123), and may even exclude from certain occupations persons whose deportment does not meet announced standards (*Barsky v. Board of Regents, supra*).

---

[7]The Record at bar discloses only the decision of the sub-Committee of respondent Committee of Bar Examiners, which gave the first reason as the sole ground for denial. *Amicus* is advised that the decision of the whole (respondent) Committee, dated May 17, 1954, containing the additional ground therefor, was inadvertently excluded from the Record, and that the Clerk of this Court has been requested by Petitioner to insert same as a part thereof.

Honesty, probity and feasance, however, are ascertainable indices of *conduct*, long a part of the common law, if not upon the statute books of every state. A vocation maintaining direct relations with the public obviously requires such virtues of those occupied in it; and the rejected licensee cannot be heard to complain if his biography fails to reveal an adherence to common ethics which the law commands of every man.

But whatever interest the state has in its licensees' moral habits stops at the threshold of their opinions and associations (*Near v. Minnesota*, 283 U. S. 697; *DeJonge v. Oregon*, 299 U. S. 353; *Lovell v. Griffen*, 303 U. S. 444; *West Virginia Board of Education v. Barnette*, 319 U. S. 624; *Thomas v. Collins*, 323 U. S. 516; *Hannegan v. Esquire, Inc.*, 327 U. S. 146; *Saia v. New York*, 334 U. S. 558; *Lawson v. Housing Authority*, 270 Wis. 269, 70 N. W. (20) 605; cert. denied, 350 U. S. 882; *Housing Authority v. Cordova*, 130 Cal. App. (2d) 883, 279 P. (2d) 215; Cert. denied, 350 U. S. 969). For opinion—whether printed or parol—does not lend itself to "trial." And when governments—or courts—undertake to adjudge men by what they say—or by the company they keep—the fallibility and human inconsistency of such judgment becomes all too plain.

In *Fiske v. Kansas*, 274 U. S. 380, for example, the Supreme Court of Kansas had ruled that the language constituting the then preamble of the I. W. W. Constitution amounted to punishable advocacy of the forceful overthrow of organized government. Upon review, this Court declared the very same language incapable, as a matter of law, of supporting such a meaning, and held the document entitled to Constitutional protection.

Similarly, in *Sicurella v. United States,* 348 U. S. 385, a defendant claimed that he deserved classification under the draft laws as a conscientious objector. His status hinged upon an evaluation of his written reply to the question: Under what circumstances, if any, do you believe in the use of force? The defendant's reply was declared by the draft board, the District Court and the Court of Appeals to evidence a belief in force, thus disallowing exemption. Nevertheless, the Supreme Court, reading the same language, concluded differently.

Conversely, in 1943, this Court was able to draw from Marxist-Leninist books a "tenable conclusion" that the Communist Party did not advocate force and violence (*Schneiderman v. United States,* 320 U. S. 118, 157). Yet, virtually all of this same literature is submitted in Smith Act cases as evidence that that doctrine is advocated against government today (See *e.g., United States v. Lightfoot,* 228 F. 2d 861, cert. granted, 350 U. S. 992).

But there is more at stake here than speech. Petitioner has an estate in the practice of law; he spent three years preparing for it, at great personal sacrifice, and at an advanced age [R. 7, 34-35, 104]. Due process forbids that a man should be denied employment because of the color of his skin (*Yick Wo v. Hopkins,* 118 U. S. 356; *Takahashi v. Fish and Game Commission,* 334 U. S. 410; cf. *Alston v. School Board* (CCA 4th, 1940) 112 F. 2d 992); or because of his place of birth (*Truax v. Raich,* 239 U. S. 33); or on account of innocent beliefs or associations (*Cummings v. Missouri,* 4 Wall. 277; *Ex parte Garland,* 4 Wall. 333; *Wieman v. Updegraff,* 344 U. S. 183; cf. *Slochower v. Board of Education,* 350 U. S. 551; *Cole v. Young,* 351 U. S. 536). The censor-

ship power is "so abhorrent to our traditions that a purpose to grant it should not be easily inferred" (*Hannegan v. Esquire, Inc., supra,* p. 151; *Saia v. New York, supra*).

Clearly, California has here gone far beyond its legitimate function of protecting the consumer and the client. Petitioner has been deprived of an opportunity of following his professional calling *not* because he was once convicted of *embezzlement,* or *fraud* or *perjury;* but rather because respondents do not trust his ideas. For the record at bar discloses that respondents were most concerned about such matters as:

> "Mr. Sterling: I assure you I don't want to get into a debate on the subject, *but the thing that strikes me about the editorial line expressed in your writings in the Eagle is that it is not anti-communist* . . ." . . . [R. 19, 20].
>
> * * * * * * * *
>
> "Q. (By Mr. Preston) . . . (w)hat I frankly am trying to ascertain is understand your viewpoint . . . and I referred you to this editorial, 'The Gangsters, Incorporated,' to ascertain whether or not you felt that this was a beneficial bit of *education,* something that would help America, help its citizens.
>
> A. I may have felt that at the time.
>
> Q. *Do you still feel that way?*" [R. 24.]
>
> * * * * * * * *
>
> "Q. (By Mr. Preston, after quoting aloud excerpts from one of petitioner's editorials): . . . Now that is two paragraphs taken from your article as indicated. What I am asking you is do you feel

that that is the proper approach educational-wise for a person who seeks to be a member of the Bar?" [R. 25.]

* * * * * * * *

"Q. I assume that you are acquainted with the State statute [Sec. 6064.1, Business and Professions Code] that we now have on the books where among other things we are obliged to inquire into this type of a thing, and where we find that any people appear to have views of endeavoring to change our government and so forth by force and violence, *or in other words the popular conception of communism* that we are expressly prohibited from certifying that person. You are familiar with the statute?

"A. Yes, I am.

"Q. Mr. Konigsberg, are you a Communist?" [R. 28, 29.]

* * * * * * * *

"Q. . . . The only way I can find out and aid this Committee in finding out about your character is to ask you these questions . . ." [R. 31.]

* * * * * * * *

"Mr. Fuller: What organizations do you presently belong to?" [R. 109.]

* * * * * * * *

"Mr. Fuller: . . . *I think we are entitled to know who he associates with.*" [R. 109.]

Here is censorship at its worst. Here is the shocking spectacle of lawyers who not only inquire into petitioner's belief's and associations, but challenge their validity. Of what concern to the State are such matters? Respondents explain that they are indicative of moral character and loyalty. But morality is concerned with the difference

v. *Comm'n*, 301 U. S. 292, 302, and where a standard for admission to the Bar is so vague as to allow wholly arbitrary action, and is so applied as to abridge First Amendment rights, it must be struck down as a violation of the due process clause of the Fourteenth Amendment, (Cf. *Burstyn* v. *Wilson*, 343 U. S. 495, and Mr. Justice Frankfurter's concurring opinion therein).

On its face, the requirement that an applicant for admission to the Bar be a person of "good moral character" is reasonable and is, indeed, an almost universal qualification. But this assumes that the words are to be taken in their ordinary, everyday meaning. When "good moral character" is extended to encompass orthodox political thinking and governmentally approved speech and affiliation, when, in effect, the measuring stick is made of elastic, the standard is a standard no longer and must be struck down as a violation of due process.

In defending the application of loyalty tests as a condition of the right to practice law and in suggesting that the test of "good moral character" might be deemed to include disavowal of beliefs and affiliations which the examining committee deems improper, Brown and Fassett in their article "Loyalty Tests for Admission to the Bar" (20 U. Chi. L. R. 480, 1953), said:

> "[A]n ordinary citizen might believe with utmost sincerity and devotion to his country that its welfare required abstention from violence under all circumstances, even against invasion. Contrariwise, another might urge immediate resort to violence to overthrow a government he believed to be corrupt. Whether such beliefs are permissible for a lawyer has been questioned."

We suggest that the First Amendment forbids us to entertain the concept that a lawyer—or anyone else—needs

permission to believe what he does believe. And the necessary corollary must be that one cannot be denied the right—or the privilege—of practicing law in return for the surrender of one's constitutional right to believe what he does believe. (See Willcox, "Invasions of the First Amendment Through Conditioned Public Spending," 41 Cornell LQ.12 (1955).) "The courts may not regard such refusal [to deny membership in 'subversive organizations'] as an adverse reflection upon character." *In re Adoption of a Minor* (D. C. Cir. 1955), 228 F. 2d 446, 448.

Once it was sought to bar from the legal profession those who had not merely *advocated* forcible overthrow of the government but who had rather actually participated in supporting the forces of the Confederacy when it sought by force of arms to overthrow the government. *Ex parte Garland,* 4 Wall. 333. When *Garland* was decided, applicants for admission to practice before the United States Supreme Court were required to be persons of "fair character." Yet it did not occur to this Court to conclude that Garland's political crime of supporting the Confederacy in its actual attempt to overthrow the government of the United States should serve as any evidence of lack of "fair character."

The suggestion that the holding of revolutionary or quasi-revolutionary beliefs is not "permissible for a lawyer" and is evidence of lack of "good moral character" is absurd on its face, but even more absurd in the light of our national history. "It would raise serious questions about the good moral character of such lawyers" (to name only three) as

> "*Thomas Jefferson,* who said: 'I hold it, that a little rebellion, now and then, is a good thing, and is necessary in the political world as storms in the physical. * * * It is a medicine necessary for the sound health of government.'

"*Alexander Hamilton* who said in the Federalist: 'If the representatives of the people betray their constituents, there is then no resource left but in the exercise of that original right of self-defense which is paramount to all positive forms of government • • •'

"*Abraham Lincoln,* who said in his First Inaugural: 'This country belongs to the people who inhabit it. Whenever they shall grow weary of the existing Government, they can exercise their *constitutional* right of amending it or their *revolutionary* right to dismember or overthrow it.'"

Countryman, Loyalty Tests for Lawyers, XIII Lawyers Guild Rev. 149, 157 (1954).

B. A finding, upon the evidence herein, that petitioner advocates forcible overthrow of the government can only be reached in derogation of the requirements of due process of law.

Petitioner has denied that he advocates forcible overthrow of the government and according to the record, there was no evidence before the committee to the contrary. If the committee had such evidence, it was not disclosed to petitioner and he was given no opportunity to rebut it. If there were witnesses to testify to such advocacy they are the "faceless informers" who cannot breathe the clear air of a courtroom nor withstand for a moment the unmasking of confrontation and cross-examination. Any deprivation of right or privilege based upon such evidence is a rank denial of due process of law. *Parker* v. *Lester* (9th Cir. 1955), 227 F. 2d 708.

But perhaps the committee had no such evidence and reached its conclusion upon inferences from the evidence before it. Thus it may have concluded, on the basis of testimony that petitioner attended some meetings of the Com-

munist Party in 1941, that he was then a Communist Party member. It would then proceed to build a second inference upon the first—that at the time of such membership he personally advocated forcible overthrow of the government. A further inference upon an inference would be required—and this in the face of petitioner's denial that he is a Communist and his assertion that he opposes forcible overthrow—that he presently advocates the forcible overthrow of government. This tower of inferences must topple. Certainly it does not deserve the name of evidence, and citation of authority is surely superfluous.

The only remaining alternative hypothesis is that the committee assumed that petitioner's refusal to answer questions concerning Communist Party membership warrants an inference that he was and is a knowing member of the Communist Party. Such an inference from a refusal to answer on grounds of possible self-incrimination—and *a fortiori* on First Amendment grounds—is improper: *Slochower* v. *Board of Education*, 350 U. S. 551 (1956). And cf. *Adamson* v. *California*, 332 U. S. 46, 55 (1947) where this Court offered as an example of state legislation which would deny due process "a statute [which] declare[d] that a permitted refusal to testify would compel an acceptance of the truth of the prosecution's evidence."

C. On any theory, denial of an application to practice law because of political beliefs and affiliations is an unconstitutional abridgment of "First Amendment Rights".

The First Amendment guarantees that no one will suffer punishment, at the hands of the Government, for the expression of his beliefs or associations or for the refusal to disclose such beliefs and associations. The freedom of speech and association, thus guarded by the First Amendment, is among the fundamental rights and liberties protected, by the due process clause of the Fourteenth Amend-

ment, from infringement by the States. *Near* v. *Minnesota*, 283 U. S. 697, *De Jonge* v. *Oregon*, 299 U. S. 358, *Stromberg* v. *California*, 283 U. S. 359.

The protection extends to action by any arm or agency of the State.[1] It applies to the Committee appointed by this Court to pass on character and fitness. Such a hearing is part of the procedure for admission to the Bar and the authority exercised by such Committee is "not a mere ministerial power. It is the exercise of judicial power and has been so held in numerous cases." *Ex Parte Garland*, 4 Wall. (U. S.) 333, 378. See also, *In re Summers*, 325 U. S. 561, 570, where the Court said that while "the responsibility for choice as to the personnel of its Bar rests with Illinois", nevertheless "a decision which violated federal rights secured by the Fourteenth Amendment would authorize our intervention."

An inquiry into the field of a person's beliefs, his political views and his membership in political and quasi-political organizations infringes upon rights protected by the First and Fourteenth Amendments, and a decision of a Committee of this Court that the right to practice law depends either upon the applicant's willingness to answer such questions or upon the nature of his answers is "a decision which violated federal rights".

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[1] *Burstyn* v. *Wilson*, 343 U. S. 495 (Commissioner of Education); *Kunz* v. *People*, 340 U. S. 290 (Police Commissioner); *Cantwell* v. *Connecticut*, 310 U. S. 296 (Public Welfare Council); *Public Utilities Comm.* v. *Pollak*, 343 U. S. 451 (Transit company operating under franchise and supervision of Federal Government Agency).

POINT II

The state action here is a challenge to the independence of the Bar.

If it is the calling, and not the person, to which standards of fitness must be reasonably related under the Constitution, the fundamental inquiry must be as to the nature and function of the calling of the lawyer and the importance of the lawyer in our constitutional system. Whether a state has acted within appropriate constitutional limitations, or arbitrarily deprived a person of a right to pursue a calling can be determined initially only by so examining the attributes of the right which the person seeks to exercise. Cf. *Ex parte Garland*, 71 U. S. 333, 378-80.

The Sixth Amendment to the Constitution provides that in all criminal prosecutions the accused shall enjoy the right "to have the assistance of counsel for his defense". The right is of such character that it cannot be substantially denied without violating the due process provisions of the Constitution. *Powell* v. *Alabama*, 287 U. S. 45. Clients are entitled to "fearless, vigorous and effective" advocacy. *Offutt* v. *United States*, 348 U. S. 11. They are entitled, of course, to lawyers who have sufficiently established their knowledge of the law and who have not themselves been proven guilty of violations of the criminal law or acts of dishonesty. If these qualifications be met, the primary requirement of the client is that he be fearlessly and courageously represented. "The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or withheld from him, save by the rules of law, legally applied. *No fear* of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty." American Bar Association, *Canon of Ethics*,

No. 15 (emphasis added). Intrinsic then to the proper representation of a client is freedom from fear and constraint—in short, independence of mind and action.

The aggregation of clients and prospective clients is the people, who have a fundamental interest in the administration of justice and the courts. Again, this Court has observed that the preservation of the independence of the bar is "too vital to the due administration of justice" (*In re Watts,* 190 U. S. 1, 29) to allow any dubious intrusions therein. All persons understand that there can be no fair trial in a court of law without the aid of independent counsel and that the cornerstone of our system of justice is fair trial for all. "Those of us who are custodians of the law, *sworn to uphold constitutional traditions, in our daily work,* have a special responsibility. *We have the duty* to see to it that the recurring episodes and expedients by which dominant influences exploit mistrust and intolerance do not become the accepted pattern". Justice William O. Douglas, *A Crusader for the Bar: Due Process in a Time of World Conflict,* 39 A. B. A. J. 871, 874 (1953) (emphasis added).

Ever since the original attorneys for Peter Zenger were disbarred because they filed exceptions to the authority of the justices to sit at the trial (Trial of Zenger, 17 How. St. Tr. 673, 683-87), the importance of an independent Bar to the administration of justice has been recognized. See, Stansbury, *Report of the Trial* of *James H. Peck, Judge of the United States District Court* (1833), pp. 448-450. See also, *Offutt* v. *United States,* 348 U. S. 11, 13; *Cammer* v. *United States,* 350 U. S. 399, 403-4. "Qualifications" for admission to the Bar, and their application and construction in particular cases, should be measured against the aforesaid fundamental requirement in testing constitutional power.

Moreover, the lawyer has a duty to lead the community in the preservation of democratic rights, not to become a

conforming robot as a condition to entrance into the profession. "The traditional function of lawyers is that of servant to the whole people, guarding justice and expanding the areas of individual freedom. The judgment of history on the lawyers of our generation will be based on how adequately we have fulfilled this noble calling". William T. Gossett, General Counsel to Ford Motor Co., *Address to Michigan Judges Ass'n.* (Release of Ford News Bureau, Sept. 5, 1952). Indeed, it is a "moral" and "ethical" duty for a lawyer to inform the public whenever he believes that fundamental rights are being violated by government officials or any dominant group. This can hardly be done by craven men. "For owing to the fact that we live under popular government, and that legislation may in its origin and formulation proceed in ignorance or defiance of fundamental and constitutional rights or guarantees, the lawyer may find himself, in the very discharge of his duty to the community, bound to question, criticize and attack the validity or enforcibility of laws; and if laws believed by him to be invalid touch the security or rights of his client, he *must be fearless* in asserting that belief, in the appropriate forums of justice, or public opinion, or even in the legislative halls themselves". Jessup, *The Professional Ideals of the Lawyer, A Study of Legal Ethics* (N. Y. 1925), p. 24 (emphasis added).

There are, in the final analysis, pragmatic reasons for an independent Bar. History supports the view that it is to an independent Bar we owe much of our present power to freely discuss the acts of government officials. If there exists the privilege of meeting for the promotion of needed reforms; if those who desire changes in our Constitution may still be recognized as patriots, and not doomed to die the death of traitors, no little credit is due the courageous lawyers who throughout the centuries have refused to truckle to anyone in the discharge of their duties. See, Lord Brougham on *Thomas Erskine*, quoted in 1 Cooley's Const. Lim., 8th ed., p. 704, footnotes.

CONCLUSION

California has fashioned a measure for the fitness of persons to practice law which is incompatible with the right sought to be exercised. The tailoring is arbitrary, irrational and unlawful; it cuts off a fundamental right and does not conform to the requirements of due process.

Respectfully submitted,

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LIBRARY
SUPREME COURT, U.S.

MOTION FILED OCT 25 1956

IN THE

Supreme Court of the United States

October Term, 1956.

No. [redacted]5

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF.

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between right and wrong action; it deals with "establishing principles of right and wrong in *behavior*" (Webster's Collegiate Dictionary, 5th Edition, p. 648). Are respondents contending that they may issue a license to those who hold opinions which *they* believe to be *right;* and may withhold a license from others whose views they conceive to be in error? Manifestly, they cannot, for freedom cannot survive upon such terms. If the ideas and associates of a licensee must be first submitted for approval by the state in order to obtain a privilege—*nay, in order to earn a living*—the ultimate result is that licensees (including perhaps those who borrow books from the public library, or ride to work on publicly owned street cars) will learn to have no ideas or associates. Such a condition is neither tolerable, nor democratic, nor constitutional.

The freedoms: speech, press and assembly are accorded a *preferred* place in our constitutional system, whoever may claim them, and the licensing power of the state may not be used to interfere with their exercise save in the face of a grave and iminent danger (*Saia v. New York*, 334 U. S. 558, 561). Even in the latter event statutory restraints upon First Amendment rights must be narrowly drawn, limited in scope to the evil at which it is directed, and utilizing standards by which the prohibited conduct may be ascertained as readily by the speaker as by the prosecutor or judge (*Winters v. New York*, 333 U. S. 507; *Saia v. New York, supra; Hennegan v. Esquire, Inc., supra*).

If petitioner's speech is punishable, it must be because it incites to unlawful action, and is uttered to attain this objective (*Chaplinsky v. New Hampshire*, 315 U. S. 568; *Kunz v. New York*, 340 U. S. 290; *Terminiello v. Chicago,*

337 U. S. 1). Yet approval of petitioner's application was withheld because, in respondents' words, his editorials *"consistently followed the Communist Party line,* and in doing so, violently attacked the Supreme Court of the United States and other government leaders *who acted contrary to Communist wishes"* (Op. Br. 6).[8] Not only are these glandular characterizations vague and meaningless (See *United States v. Hautau,* 43 F. Supp. 507, 508; *United States v. Lattimore,* 215 F. 2d 847, 849), but their employment here reveals how little understanding respondents have of the nature and scope of their powers.[9] Criticism of a court does not, of course, warrant suppression of speech unless and until it interferes with the performance of judicial duties, or is clearly in danger of doing so (*Pennekamp v. Florida,* 328 U. S. 331; *Craig v. Harney,* 331 U. S. 367; *Bridges v. California,* 314 U. S. 252). It is quite apparent that petitioner's comments were not measured in terms of their effect upon the judicial functions of the Supreme Court.

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[8]Op. Br. refers to Respondents' Brief in Opposition to Petition for Writ of Certiorari on file herein; the number cited refers to page therein where the reference may be found.

[9]It also indicates that respondents have overlooked history—for example the infamous Sedition Law of 1798, which *inter alia,* punished persons who attempted to destroy the confidence of the people in their officers, thus tending to sap the foundations of our government. Among those prosecuted and convicted under this law was Dr. Thomas Cooper, for his editorial attacks upon President Adams. The Judge who presided at his trial took particular exception to Cooper's statement that: "Our credit is so low that we are obliged to borrow money at eight per cent in time of peace." Cooper was sentenced to six months in prison, and fined $400.00. In later years, he served as a judge, a professor at Dickenson College and at the University of Pennsylvania, and finally, as the President of South Carolina College (Giles J. Patterson, *Free Speech and a Free Press* (1939 ed.), at pp. 136-137).

Likewise, if petitioner was punishable for his associations, it would only be because he had conspired to commit a crime (*Dennis v. United States*, 341 U. S. 494). But courts do not take judicial cognizance of such conduct (*Schneiderman v. United States*, 320 U. S. 118; *Ex Parte Fierstein*, 41 F. 2d 53, 54; *cf. Wieman v. Updegraff*, 344 U. S. 183; *Lanzetta v. New Jersey*, 306 U. S. 451), and the record is barren of any such evidence. True, there is some testimony in the record which puts petitioner in the Communist Party in 1942. But even if this were true, such membership was not then illegal; and indeed, in that year the Communist Party appeared on the ballot in many states.[10] Moreover, conceding that California has a legitimate interest in the security of its citizens in 1954 (or 1956), the State Bar does not indicate just how that interest is put in jeopardy by an alleged Communist Party membership in 1942.

Thus, petitioner's inability to obtain a license from California is also premised on guilt by innocent association—upon acts, connections and human relations fully innocent on their face and in themselves. Compare this approach to that of Judge Jeffries, the "Hanging Judge" of English history in the famous trial of Lady Lisle (11 Howell's State Trials, p. 298).

Lady Lisle was charged with high treason for harboring an alleged rebel soldier, one Hicks. Her defense was that she knew Hicks only as a Presbyterian minister who was wanted merely for "preaching in private meetings." She "did not in the least suspect him to have been in the

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[10]See dissenting opinion of Mr. Justice Black in *Jay v. Boyd*, 351 U. S. 345, at pp. 362, 363.

[rebel] army [of the Duke of Monmouth], being a Presbyterian minister that used to preach and not to fight." (*Ibid.*, p. 359.)

To this Lord Chief Justice Jeffries:

> "But I will tell you, there is not one of those lying, sniveling canting Presbyterian rascals, but one way or other had a hand in the late, horrid conspiracy and rebellion; . . . *their principles carry them to it* . . . "
>
> . . . 11 Howell's State Trials, at p. 359.

Lady Lisle was convicted and hung, although four years later, Parliament "reversed" her attainder (*Ibid.* at p. 382.)

However, respondents go further than merely assessing character from past beliefs or associations. They are concerned, as well, with "whether he would write such *irresponsible* articles today" (Op. Br. 7, 9). Their contention seems to be that petitioner's refusal to dissociate himself from opinion and associates objectionable to respondents implies his continued adherenec to them; and therefore, presumably, he is not entitled to practice law in California [R. 34; Op. Br. 5-9]. Put another way, California claims the right to pasteurize the political opinions of any citizen coming to it for a privilege.

The answer to such an argument is that petitioner's beliefs and associations do not assume a different Constitutional posture merely because he seeks a license (*Hannegan v. Esquire, Inc., supra; Lawson v. Housing Authority, supra; Housing Authority v. Cordova, supra; cf. Wieman v. Updegraff, supra*). It is too obvious to deserve more than passing mention that if a state can claim the power to review the beliefs and associations of a lawyer merely

because he is a lawyer, asserting the privilege of being such, then it is equally tenable that the Sheriff may enter and search his house without a warrant because the Constitutional prohibition against illegal searches and seizures does not apply to lawyers as it does to other individuals.[11]

The freedom to express one's views is no transitory title dependent for its exercse upon whether or not its owner is seeking governmental favor; rather it is as inviolable a right of citizenship as loyalty is an obligation thereof. Therefore, petitioner should not be expected to disavow beliefs and associations which are not illegal. Yet, during the proceedings below, respondents cited an editorial in which petitioner states that:

> ". . . the truth about the world's daily events will be found only in such publications as the California Eagle, People's World, National Guardian [etc.]. . . ." [R. 110.]

and then asked petitioner:

> ". . . Is that still your position? . . . is that still a true statement? . . . Is it your interpretation that newspapermen have the right to print false statements?" [R. 111.]

In fact, it is significant that respondents postulate their "strongest" case upon an excerpt from one of petitioner's articles entitled "Lots of Plots" [R. 211, at p. 214], and offer it as the kind of "substantial evidence" which portrays him as an advocate of the forceful overthrow of government (Op. Br. 22). Yet, one searches that article in vain to discover so much as an intimation of what respondents presumably found there.

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[11]From concurring opinion of Justice Floyd in *Sheiner v. Florida State Bar* (1955), 82 So. 2d 657, 664.

The conclusion is inevitable that respondents manifest a distrust and suspicion of petitioner's political opinions because they happen to conflict with their own cherished beliefs. Respondents' error, therefore, is in ascribing to the vigour and unpopularity of petitioner's writings—to his independence of judgment—an immoral or unlawful conduct. Such error is the kind that invariably follows when governments trespass upon forbidden areas of conscience. Fortunately, neither the Constitution nor our concepts of justice and fairplay will suffer one's livelihood to be suspended upon the "slender reed" of conjecture or orthodoxy (*cf. Schneiderman v. United States, supra,* at p. 159; *Bridges v. Wixon,* 326 U. S. 135, 166; *Dickinson v. United States,* 346 U. S. 389, 397).

Conclusion.

The refusal of respondents to certify petitioner as eligible to practice law in California rests upon grounds which constitute a prior restraint upon his right to freely speak, think and associate. Respondents' decision should be reversed with directions to admit petitioner to the State Bar.

Respectfully submitted,

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MOTION FILED JAN 13 1956 LIBRARY SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

October Term, 1955

No. [illegible]

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

Motion for Leave to File Amicus Curiae Brief and Brief of National Lawyers Guild, Los Angeles and Hollywood-Beverly Hills Chapters, as Amicus Curiae on Behalf of Petition for Writ of Certiorari.

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SUBJECT INDEX

PAGE

Motion for Leave to File Amicus Curiae Brief 1

Amicus Curiae Brief 3

Argument 3

I.

Nature of interest of amicus curiae 3

II.

Statement of reasons for belief that the question of law to be here argued will not be adequately presented by the parties 5

III.

Petitioner's First Amendment rights were violated by respondents' consideration of his published political views 6

TABLE OF AUTHORITIES CITED

Cases	Page
Bridges v. California, 314 U. S. 270	8
Cantwell v. Connecticut, 310 U. S. 296	6
Gallagher v. Municipal Court, 31 Cal. 2d 784, 192 P. 2d 905	9
Meyer v. Nebraska, 262 U. S. 390	7
Perez v. Sharp, 32 Cal. 2d 711, 198 P. 2d 17	6, 9
Secombe, Ex Parte, 19 How. 9, 13	8

Rules	
Rules of the United States Supreme Court, Rule 5	7
Rules of the United States Supreme Court, Rule 42	1

Statutes	
California Business & Professions Code, Secs. 6000 et seq.	4
California Business & Professions Code, Sec. 6001	6
California Statutes of 1939, Chap. 34, Sec. 1, p. 347	4
United States Constitution, First Amendment	6, 9
United States Constitution, Fourteenth Amendment	6, 7, 9

Textbook	
Corbin, The Constitution of the United States of America, 1952, Legislative Reference Service, Library of Congress, Doc. No. 170, p. 527	8

IN THE

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October Term, 1955.

No. .....

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF.

As provided in Rule 42, Rules of the Supreme Court, the National Lawyers Guild, Los Angeles and Hollywood-Beverly Hills Chapters, hereby moves for leave to file a brief *amicus curiae* on behalf of petition for writ of certiorari, the nature of this movant's interest, the facts or questions of law that have not been, or reasons for believing they will not adequately be presented by the parties and their relevancy to the disposition of the case being hereinafter stated as argument.

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Attorney for Amicus Curiae.

ROBERT W. KENNY, President
National Lawyers Guild, Los Angeles
and Hollywood-Beverly Hills Chapters,

IN THE

Supreme Court of the United States

October Term, 1955.

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RAPHAEL KONIGSBERG,

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THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

AMICUS CURIAE BRIEF.

ARGUMENT.

I.

Nature of Interest of Amicus Curiae.

This *amicus curiae* is a chapter of National Lawyers Guild, a national bar association which was founded in 1937. It has engaged in activities traditional to bar associations, seeking in numerous respects to enhance the standards of the legal profession, to advance the administration of justice and to improve substantive and procedural law, to protect democratic institutions and the constitutional rights of all to liberty.

This *amicus curiae* files briefs, releases studies and reports, submits testimony and recommendations to legisla-

tive committees, including recommendations with respect to standards of admission to the bar, holds conferences and meeting, takes positions on legislation and other questions of public importance.

The only prerequisite to membership in the National Lawyers Guild is membership in the bar, and it has never conditioned membership on political belief or affiliation, race, color or religious tenets.

Consequently, *amicus curiae* is gravely concerned by the case at bar in which there is presented by this Court by the State Bar of California and the Committee of Bar Examiners the contention that political speech, and real or asserted political belief and affiliation, are constitutionally valid criteria to determine whether an applicant is "of good moral character."

Moreover, the members of this *amicus curiae* are likewise members of the State Bar of California.

Finally, this *amicus curiae* is a bar association officially recognized by the State Bar and currently certified to participate equally in its operation with all other similarly recognized bar associations. As a part of the integrated bar of California (The State Bar Act, Cal. Bus. & Prof. Code, Secs. 6000 *et seq.*, added by Stats. 1939, Chap. 34, Sec. 1, p. 347), it is respectfully urged that the views here expressed are entitled to be heard.

II.

Statement of Reasons for Belief That the Question of Law to Be Here Argued Will Not Be Adequately Presented by the Parties.

With deference to able counsel who represent petitioner, *amicus curiae* suggests that his principal concern necessarily is the plight of his client for whom he has the prime responsibility which he can share with no one. If his perspective is shortened it is understandable.

On the other hand, with equal deference to able counsel who represent respondents, *amicus curiae* suggests that the power and authority of their clients having been flatly challenged on serious constitutional grounds by a neophyte at the threhhold of the bar, they have appraised the problems at hand within, so it seems to *amicus curiae*, the narrow limits of the instant suit without, it seems to appear, due consideration being afforded to the impact of the protested action upon the welfare of either bar or bench, notwithstanding their asservations to the contrary.

For these reasons, *amicus curiae* believes there will not be adequately presented the question of law now to be argued.

III.

Petitioner's First Amendment Rights Were Violated by Respondents' Consideration of His Published Political Views.

If the stated propositiou is true, this First Amendment right is encompassed in the concept of liberty in the Fourteenth Amendment and state legislatures [and certainly a public corporation such as the State Bar of California (Cal, Bus. & Prof. Code, Sec. 6001)] are therefore no more competent than Congress to enact such a law or rule as the Supreme Court of California recognized *Cantwell v. Connecticut,* 310 U. S. 296, to hold in *Perez v. Sharp,* 32 Cal. 2d 711, 198 P. 2d 17.

That the proposition here asserted is present in the case at bar is established by respondent's statement that the first question here presented is: "Did the Committee of Bar Examiners violate petitioner's constitutional rights by considering newspaper articles written by petition in which he made irresponsible and unfounded attacks on the character and integrity of this Court and other respected persons?" (Resp. Br. p. 18.)

In the first place, this petitioner urges that, at least in the context of this case, the claim that petitioner's attacks were either irresponsible or unfounded must be regarded as clearly irrelevant.

The entire record establishes that respondent Committee did much more than merely "consider" these facts. It conclusively shows that the Committee forced this subject matter into the hearings.

Moreover, the views expressed in these newspaper articles obviously were of great interest to the Committee and there is no doubt that their explicit disapproval of

them was placed in the scale against petitioner in the determination of the prime question: Was he a person of good moral character?

It is not possible to measure the weight attached to the political views of petitioner and thus placed in the scale against him, but that this weight was placed there is established by the fact that the factor of political views was "considered". Nor, *amicus curiae* suggests, can the record be read in any way except to establish that these published political view were of substantial, if not controlling weight in the protested decision of respondent Committee. But even if it cannot be demonstrated that this constitutionally embargoed material was of controlling weight (a question which can be answered only in the conscience of the Committee), the record indubitably establishes that this material was received and "considered". Certainly then these published political views were placed in the scale.

This *amicus* limits its consideration of this contention to its effect on the admission of applicants to the bar of a state court. That it does so, however, should not obscure the fact that the source which replenishes the Federal bar, and [certainly the bar of this Court (Rule 5, Rules of the Supreme Court)] arises chiefly and nearly exclusively in the admission by state courts of applicants for admission.

Nor, is the fact of any moment that petitioner here is an applicant for admission, rather than a member of the bar seeking to prevent his disbarment for the cause here advanced as establishing lack of good moral character. Benevolent liberty, as guaranteed by the Fourteenth Amendment, to engage in a common occupation of life (*Meyer v. Nebraska*, 262 U. S. 390) is as much interested

in this petitioner's fate as in the fate of practitioners faced with the same claim.

At the very heart of this inquiry lies this principle which is of paramount and fundamental importance:

> "Subject to general statutory qualifications for attorneys, the power of the Federal courts to admit and disbar attorneys rests on the common law from which it was originally derived. According to Chief Justice Taney, it was well settled by the common law that 'it rests exclusively with the Court to determine who is qualified to become one of its officers, as an attorney and counsellor and for what cause he ought to be removed.' Such power, he made clear, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the Court, or from compassion, prejudice, or personal hostility; but it is the duty of the Court to exercise and regulate by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the Court, as the right and dignity of the Court itself." (The Constitution of the United States of America, 1952, Legislative Reference Service, Library of Congress, Edward S. Corbin, Editor, Document No. 170, p. 527; citing *Ex Parte Secombe*, 19 How. 9, 13.)

Petitioner's editorial expressions of opinion sharply, and even if falsely, impugning certain decisions of this Court and political actions of the executive are plainly within the doctrine of *Bridges v. California*, 314 U. S. 270, and for precisely the same reasons.

Moreover, these expressions by petitioner of his views, even though expressed in militant language, in his role as citizen and publisher, would be protected by California courts even if he made them after admission and in his

role as a member of the bar under *Gallagher v. Municipal Court*, 31 Cal. 2d 784, 795-796, 192 P. 2d 905, where the Supreme Court of that State said:

> "Another consideration is the fundamental interest of the public in maintaining an independent bar. Attorneys must be given a substantial freedom of expression in representing their clients. 'An advocate is at liberty, when addressing the Court in regular course, to combat and contest strongly any adverse views of the Judge or Judges expressed on the case during its argument, to object to and protest against any course which the Judge may take and which the advocate things irregular or detrimental to the interests of his client, and to caution juries against any interference by the Judge with their functions, or with the advocate when addressing them, or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon. An advocate ought to be allowed freedom and latitude both in speech and in the conduct of his client's case.' (Oswald, Contempt of Court (3d ed), pp. 56-57. See, People v. Gongetti, 344 Ill. 107, 122 [176 N. E. 292].)"

It is crystal clear that the Fourteenth Amendment would protect a candidate for admission to the bar of California who was ruled out on the basis of statute, rule or regulation prescribing as a condition for admission a factor of race or religion. The Supreme Court of California could be depended upon to strike down such a condition as positively as they did where a factor of race was used in determining eligibility to marry. (*Perez v. Sharp, supra.*) If the constitutional protection of free speech is as strong as the solicitude of the First Amendment for the liberties involved in *Perez, supra*, then it must follow that the

action here complained of must likewise be voided as it would if promised upon a condition of race or color.

In conclusion, then, *amicus curiae* urges that there is here present in the protested action an important destruction of the protected area of speech marked out by the First Amendment and that it has particular significance since it has been inflicted upon a dedicated neophyte of the bar which has the special duty of guarding that liberty.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 5

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITION FOR REHEARING.

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SUBJECT INDEX

PAGE

I.

This court should not and cannot deny the right to draw adverse inferences from failure to answer material and relevant questions 2

II.

Failure to grant a rehearing leaves important issues unsettled and will necessarily require further litigation before Mr. Konigsberg's right to be admitted to the California Bar can be determined 6

TABLE OF AUTHORITIES CITED

CASES	PAGE
Adamson v. California, 332 U. S. 46, 91 L. Ed. 1903	2
Bone v. Hayes, 154 Cal. 759	2
Freitas v. Peerless Stages, Inc., 108 Cal. App. 2d 749	2
Konigsberg v. State Bar of California (1957), ... U. S. ....., C. C. H., U. S. Supreme Ct. Bull., pp. 1033, 1050	3
Talbert v. Ostergaard, 129 Cal. App. 2d 222	2
STATUTE	
California Code of Civil Procedure, Sec. 1963, Subds. 5, 6	2
TEXTBOOK	
2 Wigmore on Evidence (3rd Ed., 1940), Sec. 285	2

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The action of this court in *Konigsberg v. State Bar* vitally affects the admissions procedures in use throughout the country. The precedent established goes far beyond the facts of the present case and can so thoroughly destroy effective administration of the standards for admission to the Bar that petitioners feel it is imperative for a rehearing to be granted.[1]

[1]Numerous Bar Associations throughout the country have expressed their serious concern with the effect that this court's opinion will have on their own admission practices and respondents submit that these groups should be given the opportunity to file *amicus curiae* briefs since this decision so vitally affects their practice.

I.

This Court Should Not and Cannot Deny the Right to Draw Adverse Inferences From Failure to Answer Material and Relevant Questions.

It is an elementary principle of jurisprudence that adverse inferences can be drawn from the failure of a person in possession of relevant evidence to produce such evidence.

2 Wigmore on Evidence (3rd Ed., 1940), Sec. 285;

Calif. Code Civ. Proc., Sec. 1963, Subds. 5 and 6;

Bone v. Hayes (1908), 154 Cal. 759;

Freitas v. Peerless Stages, Inc. (1952), 108 Cal. App. 2d 749;

Talbert v. Ostergaard (1954), 129 Cal. App. 2d 222.

Not only has California consistently followed this rule, but this court has sustained it even in situations where the party has the constitutional privilege not to answer.

Adamson v. California (1946), 332 U. S. 46, 91 L. Ed. 1903.

It is therefore incredible that this court could have meant or intended to state here that:

". . . Obviously the State could not draw unfavorable inferences as to his truthfulness, candor or his moral character in general if his refusal to answer was based on a belief that the United States Constitution prohibited the type of inquiries which the Committee was making. On the record before us, it is our judgment that the inferences of bad moral character which the Committee attempted to draw from Konigsberg's refusal to answer questions

about his political affiliations and opinions are unwarranted."

Konigsberg v. State Bar of Calif. (1957), ... U. S. ....., C. C. H., U. S. S. Ct. Bull. pp. 1033, 1050.

Petitioners respectfully submit that it is certainly not obvious that such an inference cannot be drawn, and that, on the contrary, there is no legal basis on which this court can deny petitioners the right to draw this inference. Whatever might be the court's present attitude in a case where the witness has a constitutional privilege not to answer, where there is no such privilege there is no basis for denying petitioner the right to follow the rules of evidence long existing in California.

The precedent established by a contrary decision would effectively destroy the admission procedure in use throughout the country.

Mr. Konigsberg, though asking for affirmative action, and having the burden of going forward with proof that he was entitled thereto, claimed a constitutional privilege not to answer any questions which he determined related to his associations or to his political beliefs. This included all questions regarding past or present membership in the Communist Party and necessarily prevented further inquiry into the illegal activities in which he may have participated as a member of the Party. [R. 29, 31, 71, *et seq.*, 109, 118.]

Petitioners' questions were not, as might be implied from the decision of this court, idle inquiries into Mr. Konigsberg's political philosophies and beliefs. The full Committee hearing was held in March, 1954. Petitioners would have been remiss in their duties to have ignored the events of the months and years immediately preceding

the hearing. They would have been woefully blind to have ignored the legislative and judicial findings that the Party advocated the violent overthrow of the government and that large numbers of its members were engaged in criminal activities to accomplish this end. Even assuming that, despite the reputation of the Communist Party, there were members as late as March, 1954, who did not advocate the violent overthrow of the government, did not participate in the illegal activities of the Party, and were otherwise persons of good moral character, it was the right and the duty of those entrusted with the task of passing upon fitness for admission to the California Bar to inquire into membership. If an applicant admitted membership, it would then be the Committee's duty to determine whether such membership was innocent or of a nature which disqualified him from admission to the Bar.

It may have been the intention of this court to pass only on the single factual situation before it and to merely prevent denial of admission to an applicant because of Communist Party activity which the record does not show included criminal acts. For the reasons previously stated, we disagree with such action and condemn it not only as unwise but as beyond the powers of this court. But, of even greater importance is the precedent which this decision necessarily establishes. The already difficult job of protecting the standards of the Bar by denying admission to unqualified applicants will be made infinitely more difficult. However unwise this court's decision may be in the Communist field, it was in no way restricted to questions concerning the Communist Party.

In the future any applicant may appear, present letters of recommendation from his friends and associates, state that he is a fine person qualified for admission and refuse to answer any further questions on the ground that they

infringe his freedom of speech under the United States Constitution. Regardless of whether such a privilege exists or even whether it was claimed in good faith, no adverse inferences can be drawn by the Committee,[2] and, unless the Committee of Bar Examiners can produce extensive affirmative evidence that the applicant is unqualified, he must be admitted.

It has long been the practice of the California Bar Examiners (and of their counterparts in every other state) to place their primary reliance on the information obtained from the examination and cross-examination of the applicant. Such reliance is a practical necessity. The California Committee of Bar Examiners works on a limited budget. Each year hundreds of applications are received and examined. In the past, approximately 70 cases a year have required serious investigation and actual consideration by the Committee. This number can be expected to increase under this court's decision. Even if the Bar Examiners had an unlimited staff of investigators, which they do not, they could not in the short time available gather sufficient evidence to justify any decision granting or denying admission, were they denied the right to require an applicant's full cooperation. In an occasional case, an applicant's past and present record of convictions for criminal activities will be so well known and immediately available that cooperation by the applicant might not be necessary in passing upon his eligibility for admission. However, where there is no such record im-

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[2]The opinion of this court assumes that Mr. Konigsberg claimed the privilege in good faith. However, there is little in the record or in past decisions of this court to support such an inference. Certainly the future applicant in the light of the present decision will have no difficulty in claiming broad constitutional privileges with an equal appearance of good faith.

mediately available, and the applicant fails to cooperate with the Committee by refusing to answer its material questions, the Committee could not produce (and should not be required to produce) the necessary evidence on which to base a proper determination of an applicant's fitness in the short time available. Unless the burden of proving material facts peculiarly within the applicant's knowledge remains on the applicant, it would be impossible for the Committee of Bar Examiners, or similar bodies, to carry out its duty of determining whether each of the many hundreds of applicants were qualified under the applicable state statutes. They would have no reasonable basis for their decision whether this decision was to grant or to deny admission.

We therefore urge this court to exercise its powers to grant rehearing for further consideration of the crucial questions before it.

II.

Failure to Grant a Rehearing Leaves Important Issues Unsettled and Will Necessarily Require Further Litigation Before Mr. Konigsberg's Right to Be Admitted to the California Bar Can Be Determined.

The action of the Committee of Bar Examiners in refusing to admit Mr. Konigsberg was based upon all of the evidence before it including the affirmative evidence indicating unfitness and the effect of the applicant's failure to answer relevant and material questions.

The majority of this court has isolated the possibility of admission being denied solely on the grounds that the applicant failed to answer from the other issues. For the reasons set forth by Justices Harlan and Clark this appears to us to be a completely artificial and unwarranted

fragmentation of a single issue. However, if such fragmentation is made, this issue must nevertheless be decided before Mr. Konigsberg's right to admission can be determined. The decision of the Committee with respect to Mr. Konigsberg was based on all factors before it, but there can be no doubt from the record that the applicant's refusal to answer relevant and material questions was in itself sufficient to require that admission be denied.

The Committee warned Mr. Konigsberg that he owed a duty of complete candor and that a lack of such candor made it extremely difficult for the Committee and could result in the refusal to certify.

". . . The only way I can find out and aid this Committee in finding out about your character is to ask you these questions, not what someone else thinks about you, your reputation. That is the reason I have asked the question. Could you give us a categorical answer? A. I can only give you the answer I have given you, and I would be very happy to answer that under other circumstances." [R. 31.]

". . . you are seeking admission to the profession and that we as your prospective colleagues have a right to *expect complete candor from you* on this particular question, and that if you don't wish to be completely candid with us then we are justified in saying you don't belong in our profession." [R. 34.]

". . . I think we stated our position the last time that we are interested in knowing whether or not Mr. Konigsberg has any present affiliations with the Communist party and whether or not he had any affiliations in the past; if he did have those affiliations whether they still continued in any respect." [R. 71.]

". . . The thing that troubles me is we have an affirmative duty under the statute to certify as to this applicant's good moral character. We have endeavored to point out to him that the burden of showing that character is upon him. It appeared to me that he wasn't being quite forthright with us in not giving us an answer to those questions . . ." [R. 76.]

"He is making it extremely hard for the Committee." [R. 81.]

In past cases admission has been denied on this ground alone.

". . . On a few occasions applicants have refused to answer certain pertinent questions and the Committee has rejected their applications for such reason. The Supreme Court in effect has upheld the Committee in such a case by refusing to consider it. *Cross v. Committee of Bar Examiners,* S. F. Nos. 18252, 18641 and 18922. Certiorari and mandamus denied. U. S. Supreme Court, Misc. 534 Oct. 1950 and Misc. 506 Oct. 1952." (457.)

". . . . Sometimes the person under investigation invokes the privilege against self-incrimination. The Committee has declined to certify such persons for admission on the ground such refusal forecloses the Committee from effectively pursuing a legitimate and necessary line of inquiry. The California Supreme Court has recently denied a petition for writ of review in such a case. *Brooks v. Committee of Bar Examiners,* L. A. No. 23067, October 6, 1954." (466.)

"Character Investigation of Applicants for Admission," Goscoe O. Farley, Secretary, Committee of Bar Examiners (1954), 29 S. Bar Journal 454, 457, 466.

The right of the Committee to require the applicant to present relevant information, to cross-examine, and to test the truth of and weight to be given to his affirmative evidence is essential to the proper administration of the State Bar Act. On remand the Committee must therefore continue to take the position (in the absence of further guidance from this court) that refusal to answer relevant and material injuiries necessary to a full consideration of an applicant's qualifications is, in itself, sufficient ground upon which a denial of admission can be made.

Petitioners therefore respectfully request that since this court has assumed jurisdiction of this case, it recognize that this is one of the issues properly before it. In view of its great importance to the applicant and to the Committee, a rehearing should be granted and the opportunity afforded to Mr. Konigsberg and to petitioner to brief and argue this issue.

Respectfully submitted,

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